Supreme Court, U. S.
FILED
AUG - 4 1980
MICHAEL RODAK, JR., CLERK

No. 80-250

PETITION FOR CERTIORARI

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1980

VIRGINIA CRAMER, PETITIONER-DEFENDANT IN WRONGFUL FORECLOSURE ACTION,

PETITIONER

VS

METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, a/k/a METROPOLITAN SAVINGS ASSOCIATION, JAMES I. McCLINTOCK, ROGER C. RICHARDS and JOHN C. DENYER, JOINTLY, SEVERALLY AND INDIVIDUALLY, PLAINTIFFS IN WRONGFUL FORECLOSURE ACTION,

McCLINTOCK DONOVAN CARSON & ROACH AND JAMES I. McCLINTOCK, MICHAEL DOELLE AND WILLIAM P. THORPE, ATTORNEYS AT LAW, JOINTLY, SEVERALLY AND INDIVIDUALLY,

ABEL SELBURN, ALLEN COUNARD AND WILLIAM R. McFADDEN, ATTORNEYS AT LAW, JOINTLY, SEVERALLY, AND INDIVIDUALLY,

FEDERAL HOME LOAN BANK BOARD, DIRECTOR AND/OR OFFICIAL AND/OR OFFICER IN CHARGE,

MICHIGAN SUPREME COURT MEMBERS, JUSTICES MARY S. COLEMAN, THOMAS GILES KAVANAGH, CHARLES L. LEVIN, JOHN W. FITZGERALD, JAMES L. RYAN, BLAIR MOODY, JR., and G. MENNEN WILLIAMS, JOINTLY, SEVERALLY AND INDIVIDUALLY,

RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT AND TO THE MICHIGAN SUPREME COURT

Virginia Cramer, pro se Petitioner
27314 Clairview, Dearborn Heights, Mich. 48127
Telephone: (313) 278-7286

PETITIONER'S APPENDIX VOLUME I

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION-DETROIT

CIVIL DOCKET - 79-72789
Removal from Circuit Court (78-822-879 CZ)
Foreclosure

DATE	DOCUMENTS FILED
1979	
July 17,	1. Petition for removal from Circuit Court for the county of Wayne, filed. DD 7-17-79
July 17,	2. Cash bond for removal, filed ($250.00) DD 7-17-79
July 17,	3. Notice of filing petition for removal, filed. DD 7-17-79
July 17,	--- Summons issued. DD 7-18-79
July 17,	4. Pltf's Motion for Waiver of Bond on Removal of State Case with BA and Notice of hearing to be set by Court. DD 7-18-79
July 17,	5. Pltf's Complaint for declaratory judgment, reversal of Michigan Supreme Court decision, Injunctive relief, and money damages for injuries to person and property and demand for trial by jury. DD 7-18-79
July 17,	6. Pltf's Complaint for declaratory judgment, reversal of Michigan Supreme Court decision, injunctive relief, (Intervention) and money damages for injuries to person and property. DD 7-18-79

July 17,	7.	Pltf's Motion for Preliminary, Permanent and Eternal Injunctive Relief with BA and Notice of hearing to be set by Court. DD 7-18-79
July 20,	8.	Marshal's return executed on 7/18/79 DD 7/23/79
July 24,	9.	Marshal's return executed on 7/20/79 DD 7/25/79
July 26,	10.	Marshal's returns executed on 7/19/79 (2) DD 7/26/79
July 26,	11.	Marshal/s return executed on 7/25/79 DD 7/26/79
July 30,	12.	Marshal's return executed on 7/26/79 DD 7/30/79
Aug 1,	13.	Marshal's returns executed on 7/30/79 DD 8/2/79
Aug 3,	14.	Marshal's return executed on 8/1/79 DD 8/6/79
Aug 8,	15.	Deft Allen Counard's Motion for Remand of Action with Motion to exercise discretion in favor of abstention and dismissal of declaratory complaint with BA and Notice of hearing to be set; proof of service. DD 8/8/79
Aug 8,	16.	Deft McFadden's Motion for Judgment on pleadings with Answer to Complaint for declaratory judgment with Notice of hearing to be set and proof of service. DD 8/8/79
Aug 9,	17.	Defts' and Co-Deft's Motion to dismiss with BA and affidavit in support; Notice of hearing

to be set by Court with proof of service. DD 8/10/79

Aug 9, 18. Defts' and Co-Defts' Objections to Petition for Removal of Cause to the U.S. District Court for the Eastern District of Michigan and Motion for Remand to State Court with BA and proof of service. DD 8/10/79

Aug 10, 19. Deft Members of the Michigan Supreme Court's Motion to Dismiss with BA and proof of service. DD 8/10/79

Aug 13, 20. Co-Deft Abel J. Selburn's Answer and Affirmative Defenses to Pltf's Complaint DD 8/14/79

Aug 14, 21. Co-Deft Abel J. Selburn's Motion for Judgment on pleadings with BA and Notice of hearing to be set by Ct. Court. DD 8/15/79

Aug 15. 22. Pltf's Ex Parte Motion for enlargment of time with BA and Affidavit in support. DD 8/16/79

Aug 15, 23. Pltf's Notice of filing copy of all records, pleadings and Orders of State Case, Michigan Supreme Court No. 62249, and prior action No. 57215 reported at 401 Mich 252, with proof of service. DD 8/16/79

Aug 17, 24. Notification of Service re: Petition for Removal, Bond of Removal; Notice of filing; Motion for preliminary, permanent, and eternal

injunctive relief with BA and Notice of hearing; Demand for Jury; Pltf's Complaint. DD 8/20/79

Aug 17, 25. Affidavit of Service re: Petition for Removal of Cause, Notice of Removal of State Cause, Motion for waiver of bond on removal, brief in support. DD 8/20/79

Aug 17, 26. Ex Parte Order for enlargement of time from July 18/79 for 70 days to file response to defts and co-defts brief and pleading. DD 8/20/79 DeMascio J

Aug 17, 27. Order re: Motion for Judgment by Deft Selburn on the pleadings or Summary Judgment will be denied unless w/in 5 days deft files a proof of service required by local rule IX(1) DD 8/20/79 DeMascio J

Aug 20, 28. Deft William McFadden's Brief in Support of Motion for Judgment on Pleadings. DD 8/21/79

Aug 23, 29. Proof of Service re: Ex Parte Motion for enlargment of time with Ex Parte Order for enlargment of time.DD 8/23/79

Aug 23, 30. Proof of service re: Answer to Complaint for declaratory judgment, Motion for Judgment on the pleadings or Summary Judgment and Notice of hearing DD 8/23/79

Aug 31, 31. Federal Home Loan Bank Board's Motion to dismiss Post Removal Additional Defts and Complaints and Remand Original Proceedings with BA and Notice of hearing to be set; certificate of service. DD 8/31/79

Sept 17, 32. Letter from Pltf requesting correction on pleading #12 (marshal's return)

Sept 18, 33. Letter from Corbin Davis (Supreme Court) re: motions pending in Supreme Court are to be deferred until U.S. District Court makes ruling. DD 9/19/79

Sept 26, 34. Pltf's opposition to objection to petition for removal of cause to the US District Court/Opposition to motion for remand to State Court B/A w/ affidavit. DD 9/27/79

Sept 26, 35. Motion to consolidate removed action No. 62249 and Prior action 57215 (state cases) with instant act. no. 9-72789 w/B.A. Affidavit and Notice of hearing (court to set date) DD 9/27/79

Sept 26, 36. Petitioner's reply to McFadden's answer w/affidavit Opposition to McFadden's Brief in support of motion for judgment on pleadings and Opposition to motion for Judgment on the pleading Brief in support of Opposition to McFadden's motion and affidavit. DD 9/27/79

Sept 26, 37. Objections to motion to dismiss post removal additional defendants and complaints and objections to motion to remand original proceeding Brief in support of Obj. Affidavit DD 9/27/79

Sept 26, 38. Opposition to motion for remand, opposition to motion to exercise discretion in abstention and dismissal w/B.A. affidavit. DD 9/27/79

Sept 26, 39. Motion to strike sham and false pleadings, opposition to motion to dismiss W/ notice of hearing (date to be set by court) B.A. and affidavit. DD 9/27/79

Sept 26, 40. Objections to motion for dismissal by Deft. members of the Michigan Supreme Court; Petitioner Cramer's affirmative matters and to amend the Word Reversal to read Reformation of the Michigan Supreme court decision reported at 401 Mich 252. w/B.A. affidavit and proof of service. DD 9/27/79

Sept 26, 41. Pltf's motion to strike defenses opposition to Selburn's motion for judgment on the pleadings or in the alternative opposition to summary Judgment w/affidavit Exceptions to Co-Defendant Selburn's answer, Affidavit Opposition to Selburns affirmative Defenses B.A. affidavit, Notice of Hearing and Proof of service. DD 9/27/79

Sept 26, 42. Proof of service RE: 34, 35, 36, 37, 38, 39, 40, 41, DD 9/27/79

Nov 8, 43. Order of Reassignment from Judge DeMascio to Judge Taylor. Feikens J DD 11/9/79

Nov 16, 44. Pltfs' Motion to void, nullify, or vacate Wayne County Circuit Court Order dated Sept 27/68 with BA and Notice of hearing to be set by Court; proof of service. DD 11/16/79

Nov 23, 45. Defts and Co-Defts Response to Pltf's Motion to void nullify, or vacate Wayne County Circuit Court Order dated Sept 27/68 with proof of service. DD 11/23/79

Dec 3, 46. Pltf's Opposition to Defts and Co-Defts response to Pltf's Motion to void, nullify, or vacate Wayne County Circuit Court Order dated Sept 27/68, with brief and affidavit in support, proof of service. DD 12/3/79

Dec 10, 47. Request for response to deft's motions to dismiss, or to remand, or for judgment on the pleadings by 12/21/79 and notice of hrg. set for 1/17/80 at 9:30 am. Taylor, J. DD 12/11/79

Dec 21, 48. Pltf's Supplemental Pleadings in opposition to Motion to dismiss, or remand, or judgment on the pleadings; Motion and Notice of Motion for Three Judge Court; with application for three Judge Court

		and application for interlocutory preliminary injunction and temporary restraining order by single Judge pending hearing by a Three Judge Court; Brief in support and proof of service. DD 12/26/79
1980		
Jan 11,	49.	Federal Deft's Combined Response to Pltf's Motions DD 1/14/80
Jan 17,	50.	Pltf's Opposition to Federal Deft's Combined Response to Pltf's Motions DD 1/18/80
Jan 17,	---	Deft's McFadden's motion for judgment on the pleadings heard and granted; Defts - Selburn's Motion for judgment on the pleadings heard and granted; Deft's Federal Home Loan's motion to dismiss granted; Deft Allen Counard's Motion to remand cause to Circuit Court, granted. Deft Metro Savings Assoc's Motion to dismiss granted, Motion to remand denied; Defts (Members of Supreme Ct) Motion to dismiss granted. Taylor, J DD 1/18/80
Jan 18,	51.	Order of Dismissal in Part and Order of Remand in part to the Wayne County Circuit Court Taylor, J DD 1/21/80
Feb 1,	---	File mailed to Wayne County Circuit Court. DD 2/1/80
Feb 5,	---	Transcript of 1/17/80, re motions received, forwarded to Wayne County Circuit Court. DD 2/6/80

Feb 8, 52. Pltf's Notice of Appeal. DD 2/11/80

Feb 11, 53. Letter to Atty re: Notice of Appeal. DD 2/11/80

Feb 11, 54. Proof of mailing re: Notice of Appeal (CCZ, Court Reporter, Attorneys for Defts, Pltf in pro per) DD 2/11/80

Feb 8, 55. Proof of service re: Opposition to Federal Defts' Combined response to Pltf's Motions. DD 2/11/80

GENERAL DOCKET
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Case No. 80-1118

DATE 1980		FILINGS -- PROCEEDINGS
2/25	1)	Notice of Appeals, filed; and cause docketed
3/3	2)	Appearance of W. Thorpe for the appellees
3/6	3)	Appearance of W.R. McFadden for the appellees
3/7	4)	Motion: appellant to file deferred appendix (m-3/5) (Motion Granted JPH 3/12)
3/11		Certified Record (1 vol. pleadings, 1 vol. transcript)
3/14	5)	Appearance of A.J.Selburn for appellees
3/21	6)	Notice of Hearing from appellant, pro se (m/p-3/18-19)

3/21	7)	Motion: appellant pro se for stay with affidavit in support (m/p-3/18-19)
3/21	8)	Appearance of S. Behringer for defendant-appellee
3/27	9)	Appearance of J.P.Jacobs for appellee, Counard (m-3/25)
3/27	10)	Motion: appellee, Counard to dismiss the appeal (m-3/25)
3/27	11)	Response of appellee, Counard to appellant's motion to stay (m-3/25)
4/7	12)	Response of pro se appellant to appellee, Counard's motion to dismiss with reply in opposition to Counard's (sic, opposition to appellant's) motion to stay (m-4/3)
4/11	13)	Supplement to response of pro se appellant in opposition to motion to dismiss (m-4/8) (Michigan Supreme Court Order)
4/14	14)	Motion: Appellant's brief to 5/20/80 (m-4/10) (Ext Granted 4/15)
4/14	15)	Corrected copy of supplement to response of pro se appellant in opposition to motion to dismiss (Michigan Supreme Court Order)
4/25	16)	Motion: appellee Federal Home Loan Bank Board to dismiss with brief in support (m-4/24)

5/05	17)	Order denying the motion to stay the appeal; (sic, stay pending appeal) further, order dismissing that part of the judgment of the District Court remanding the cause to the state court and affirming the balance of the judgment of the District Court pursuant to Rule 9(d)3 Rules of the Sixth Circuit (Weick, Lively and Jones, JJ) (Duty Panel)
5/6	18)	Response of pro se appellant in opposition to Federal Home Loan Bank's motion to dismiss (m-5/2)
6/23	19)	Mandate issued; Certified record returned to U. S. District Court, Detroit, Michigan.

Notice of Removal

Filed July 17, 1979 No. 79-72789
United States District Court for the Eastern District of Michigan, Southern Division-Detroit

NOTICE OF REMOVAL OF STATE CASE TO THE UNITED STATES COURT - Mich S. Ct No. 62249

TO: METROPOLITAN SAVINGS ASSOC., a/k/a METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOC., et al, James I. McClintock, Roger C. Richards, John C. Denyer, 31550 Northwestern Hwy., Farmington, Michigan

TO: JAMES I. McCLINTOCK, WILLIAM P. THORPE McCLINTOCK DONOVAN CARSON & ROACH, attorneys at law, 2150 Guardian Bldg., Detroit, Michigan

TO: MICHAEL DOELLE, attorney at law c/o 600 E. Lafayette, Detroit, Mich.

TO: ALLEN COUNARD, attorney at law 1214 Travelers Tower Southfield, Michigan

PLEASE TAKE NOTICE that the above-captioned Michigan State case is hereby removed from the Michigan courts, copy of Petition for Removal attached hereto, having been filed in the United States District Court for the Eastern District of Michigan, Southern Division-Detroit, 231 W. Lafayette, Detroit, Michigan, (Federal Building) and - that pursuant to 28 USC 1446 (e) the Michigan State courts shall proceed no further unless and until the case is remanded.

Dated:
July 10, 1979

/s/ Virginia Cramer
Petitioner (Defendant in wrongful foreclosure)
27314 Clairview
Dearborn Heights, Mich.
Telephone: 278-7286

Filed July 17, 1979 No. 79-72789
United States District Court for the Eastern District of Michigan, Southern Division-Detroit

PETITION FOR REMOVAL OF CAUSE TO THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN (SOUTHERN DIVISION-DETROIT)

Now comes Virginia Cramer, Petitioner-Plaintiff (Defendant in wrongful foreclosure action) in propria persona, and petitions this Honorable Court to remove the cause initiated in the Wayne County Circuit Court, CA #78-822-879 CZ, and which said cause is currently pending in the Michigan Supreme Court No. 62249, to the U. S. District Court for the Eastern District of Michigan (Southern Division-Detroit) for the following reasons:

1. Plaintiff (in reality, Defendant in wrongful foreclosure action) incorporates by reference herein her Complaint wherein she enumerates the Federal questions involved in this litigation, including prior action in which the Michigan Supreme Court defective decision is reported at 401 Mich 252, Cramer vs Metropolitan Savings and Loan, et al, and including but not limited to specific denial of rights guaranteed by the United States Constitution, Amendments Fifth and Fourteenth, and denial of specific rights granted by the laws of the United States, 42 USCA 1983, 1985, 1986 and 1988; and 28 USCA 1343.

2. Plaintiff-petitioner (Defendant in wrongful foreclosure action) further alleges that she is, in effect and in reality, the DEFENDANT in this matter, for

the reason that the initiation of said foreclosure action was within the control of the mortgagee-lending institution, Metropolitan Federal Savings and Loan Association, named defendants and their attorneys, named co-defendants herein; and whereby mortgagor-Virginia Cramer was denied a choice of forum and that her designation as 'plaintiff' is not truly reflective of her true position in this matter and which involves prior action reported at 401 Mich 252 by the Michigan Supreme Court.

3. That the mortgagee-lending institution (hereinafter called "Metropolitan") initiated this matter of foreclosure by advertisement (MCLA 600.3201 et seq., MSA 27A.3201 et seq.) instead of by a due process court-hearing, and that therefore, Plaintiff-mortgagor, is, in effect and in reality, the defendant in this matter in defense of the wrongful foreclosure action.

4. That this petition for removal is founded on 28 USCA 1441 (a), (b), (c); 28 USCA 1443 (1) and (2) and 28 USCA 1446 (e), and 42 USCA 1983, et seq.

5. That the Michigan State courts, at all levels of jurisdiction in this cause of action and in the prior action reported at 401 Mich 252, have denied your plaintiff (defendant in wrongful foreclosure action) due process of law by denying her a day in court, have denied your plaintiff (defendant in wrongful foreclosure action) the equal protection of the laws in violation of the Fifth and Fourteenth Amendments to the United States Constitution, and in deprivation of redress of grievances and deprivation of civil rights, under color of authority of

State common-law policy and under color of Michigan State Statute MCLA 600.3201 et seq. MSA 27A.3201 et seq., as applied, in deprivation of equal protection of the laws.

6. That pursuant to 28 USCA 1446 (e) the Michigan State courts shall proceed no further unless and until the case is remanded.

WHEREFORE Petitioner prays that this Honorable Court remove this matter to the United States District Court for the Eastern District of Michigan, Southern Division-Detroit.

Dated: July 10, 1979

/s/ Virginia Cramer,
Petitioner, Defendant
in wrongful foreclosure

Filed July 17, 1979 - NOTICE OF HEARING

TO; THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, Federal Building, 231 W. Lafayette, Detroit, Michigan

TO: THE DEFENDANTS and CO-DEFENDANTS

PLEASE TAKE NOTICE that the attached Motion for Waiver of bond on removal of State case will be brought on for hearing before the United States District Court for the Eastern District of Michigan, Southern Division-Detroit, to be set by the Court before the HONORABLE _____ in his courtroom of the United States Courthouse, 231 W. Lafayette Blvd., Federal Bldg. Detroit, Michigan.

Dated: July 10, 1979

/s/ Virginia Cramer
Petitioner - Defendant
in wrongful foreclosure

Filed July 17, 1979 - MOTION FOR WAIVER OF BOND ON REMOVAL OF STATE CASE

Now comes the Petitioner-Defendant in wrongful foreclosure action, Virginia Cramer, in pro per, and pursuant to 28 USCA 1443 and 1446 and 1447, shows to the Court as follows:

1. That your Petitioner incorporates by reference herein Preamble and the several counts of her Complaint including but not limited to Willful and Malicious Tort (in wrongful foreclosure action), Fraud, Concealment or Deception (by attorneys at law), Fraud Perpetrated Upon the State Courts (by attorneys-co-defendants herein and mortgagee-lending-institution, defendants herein) and Conspiracy to deny civil rights, due process of law, equal protection of the laws and Conspiracy to deny title-holders of mortgaged property the right to pay real property taxes by deprivation of equal rights, under color of State common-law policy, under color of authority derived from Foreclosure by Advertisement Statutes, MCLA 600.3201 et seq. MSA 27A.3201 et seq., and Deprevation of equal civil rights of citizens of the State of Michigan and citizens of the United States and denial of the opportunity and/or right to be heard in violation of the due process and equal protection clauses of the Fifth and Fourteenth Amendments to the United States Constitution.

2. That the conspirators, as obstructionists of justice, engaging themselves in said conspiracy, are mainly the lawyers and attorneys at law who represent their own interests as "collectors of escrow funds" and who scheme and deviate from and violate the law while pretending to represent their

clients interests and while depriving the State of Michigan (and the several other States) and mortgagors as title-holders of real property, of security in the collection and payment of taxes.

3. That this case has been tossed around in the jurisdiction of the State courts for over ten (10) years, where your Petitioner has never had her day in court on the wrongful foreclosure action, and where she has suffered unreasonable and excessive litigation expenses and damages, oppression and humiliation and loss of time damages by the fruad, deceit and misconduct and malpractice of attorneys (on both sides) and to require bond from your Petitioner on Removal of State case would be an undue and unjust hardship on your Petitioner.

WHEREFORE your Petitioner-defendant in wrongful foreclosure action and federal plaintiff-mortgagor prays that this Honorable court waive bond requirements on removal of State case.

Dated:
July 10, 1979

/s/ Virginia Cramer
Petitioner, Defendant
in wrongful foreclosure

BRIEF IN SUPPORT OF WAIVER OF BOND ON REMOVAL OF STATE CASE

Bond requirement may be waived at the discretion of the court.

Dated:
July 11, 1979

/s/ Virginia Cramer

Filed July 17, 1979 - NOTICE OF HEARING

TO: THE DEFENDANTS and CO-DEFENDANTS

PLEASE TAKE NOTICE that the attached Motion for Preliminary, Permanent and Eternal Injunctive Relief will be brought on for hearing before the United States District Court for the Eastern District of Michigan, Southern Division-Detroit, to be set by the Court before the HONORABLE _____ in his courtroom of the United States Courthouse, 231 W. Lafayette Blvd., Federal Building, Detroit, Michigan.

Dated:
July 10, 1979 /s/ Virginia Cramer

Filed July 17, 1979 - MOTION FOR PRELIMINARY, PERMANENT AND ETERNAL INJUNCTIVE RELIEF

Now comes Plaintiff-Petitioner, Virginia Cramer, in pro per, and moves the court for Preliminary, Permanent and Eternal Injunctive Relief and that an enjoining Order be issued against the Justices of the Michigan Supreme Court, and each of them, prohibiting, preventing, precluding, inhibiting and restraining said Justices of the Michigan Supreme Court from rendering decisions and/or opinions relative to any or all important matters, and including the following:

1. Restraining and enjoining the taking of judicial notice without proof and without evidence.

2. Restraining and enjoining the rendering of decisions and/or opinions in favor of unscrupulous litigants and their attorneys

who submit erroneous, falsified and fraudulent statements in their pleadings to the court and where said statements are unsupported and not priorly litigated in the procedures of the lower courts.

3. Restraining and enjoining the rendering of decisions and/or opinions based on false facts.

4. Restraining and enjoining the rendering of decisions and/or opinions where due process and equal protection of the laws are denied and in violation of the Fourteenth Amendment to the United States Constitution.

5. Restraining and enjoining the rendering of decisions and/or opinions in favor of implied covenants and agreements which are unenforceable.

6. Restraining and enjoining the rendering of decisions and/or opinions by failure in their duty to declare a contract or covenant and agreement illegal.

7. Restraining and enjoining the rendering of decisions and/or opinions by exertion of power due to mental disability and jeopardizing the security of property and titleholders of property and jeopardizing the security of the State.

8. Restraining and enjoining the rendering of decisions and/or opinions by exertion of power where fraud is perpetrated upon the court and condoned by the court.

WHEREFORE your Petitioner, Virginia Cramer, in pro per, prays that a Preliminary, Permanent and Eternal Injunctive Order be issued against the Justices of the Michigan Supreme Court, and each of them, prohibiting,

preventing, precluding, inhibiting and restraining and enjoining the rendering of decisions and/or opinions due to mental disability of said persons.

Dated:
July 10, 1979 /s/ Virginia Cramer

Filed July 17, 1979 - BRIEF IN SUPPORT OF PRELIMINARY, PERMANENT AND ETERNAL INJUNCTIVE RELIEF

42 USCA 1983 was enacted by Act of Congress for the express purpose of "enforcing the provisions of the Fourteenth Amendment to the United States Constitution." The role of the Federal Government as a guarantor of basic federal rights against state power is clearly established. Federal Law clearly allows for enjoining a State judge. Further, this request for issuance of restraining and enjoining Order is not intended as a restraint on the performance of the duties of the justices; on the contrary, it is intended as a restraint on their activities which the said justices are not authorized to perform, in any event.

The credibility of the Michigan Supreme Court is again at stake. The security of the State of Michigan should not be jeopardized. No thought for the security of the State was given when the decision rendered in Cramer v Metropolitan, 401 Mich 252, was written. What a mess!

Dated:
July 11, 1979 /s/ Virginia Cramer

Filed July 17, 1979
U S District Court No. 79-72789

COMPLAINT FOR DECLARATORY JUDGMENT, REVERSAL OF MICHIGAN SUPREME COURT DECISION, INJUNCTIVE RELIEF, AND MONEY DAMAGES FOR INJURIES TO PERSON AND PROPERTY, AND DEMAND FOR TRIAL BY JURY

Now comes Petitioner-Plaintiff (Defendant in wrongful foreclosure action) Virginia Cramer, in propria persona, and complains against the above-named defendants and co-defendants arising under the Constitution and laws of the United States, pursuant to the Fifth and Fourteenth Amendments to the United States Constitution and 42 USCA 1983, 1985, 1986, 1988; founded on 28 USCA 1343, 12 USCA 1461, et seq., 12 USCA 1701, et seq., 15 USCA 1, et seq., 28 USCA 1441 and among other statutory provisions and Federal questions.

PREAMBLE

1. Plaintiff Virginia Cramer, in pro per, (in reality, a "Defendant-mortgagor" in wrongful foreclosure action, as hereinafter detailed) hereinafter referred to as "Cramer", purchased real property (home-residence) in 1963 and gave a mortgage to Metropolitan Federal Savings and Loan Association (hereinafter referred to as "Metropolitan").

2. An "escrow" fund was required by mortgagee-Metropolitan as one of the covenants under said mortgage, to wit: Cramer agreed to pay "escrow" (without which, said mortgage-loan was not available) therein in accordance with the estimate of needs by Metropolitan, and Metropolitan implied both to make realistic and proper estimates

and implied to pay from said "escrow" fund the taxes and insurance premiums as they became due on said real property. Metropolitan agreed that said "escrow" funds would be held without interest thereon to pay said taxes and insurance when due.

3. During the 56 month period that followed said purchase, Cramer regularly and conscientiously made her timely mortgage payment of principal, interest and "escrow" each and every month as they became due as follows:

Purchase price	$18,950.00
Down payment	2,450.00
Balance to mortgage	$16,500.00

The "Loan Settlement Statement" itemized the monthly payments as follows:

Principal and Interest	$103.81
Tax Escrow	22.25
Insurance Escrow	4.00
MGIC (Mortgage Guaranty Insurance Corp.) escrow	3.44
	$133.50

Metropolitan furnished installment payment cards to Cramer and by which said payment cards Cramer made payments to Metropolitan each and every month without fail, as follows:

1st payment due 9-15-63

BY PAYMENT CARDS	TOTAL REQUIRED BY METROPOLITAN	CRAMER PAID
1963		
4 months @ $133.50	$ 534.00	$ 534.00
1964		
12 months @ $133.50	$1,602.00	$1,602.00
1965		
2 months @ $133.50	267.00	267.00
4 months @ $147.00	588.00	588.00
6 months @ $147.00	882.00	1,284.94
1966		
12 months @ $147.00	1,764.00	2,771.41
1967		
2 months @ $147.00	294.00	444.04
1968		
2 months @ $150.00	300.00	478.22
1 month @ $154.00	154.00	245.04
1 month @ $186.00 (Apr)	186.00**	196.17
	$8,071.00	$10,735.13
Additional escrow paid:		
December 1963	144.00	144.00
March 1965		243.00
		$11,122.13
at closing, July 29 '63	619.05	619.05
Total payments including "escrow"	$8,834.05	$11,741.18

The payment made for April 15, 1968, which was the last current monthly installment, immediately prior to the published foreclosure of May 23, 1968, was allocated by Metropolitan as follows:

** 4-26-68	Principal & interest	$103.81
	Escrow	82.19
	Additional principal	10.17
		$196.17

4. That during said 56 month period, Metropolitan breached the covenant agreement as relates to "escrow", repeatedly, in that:

(a) Metropolitan failed, refused and neglected to properly estimate the "escrow" fund needs and, in fact, revised their "requirements" as frequently as five (5) times within a two-month period, during February and March of 1965.

(b) Failed, refused and neglected to make property tax payments when they became due on said property in the years 1963, 1964, 1965 and 1967; thus, jeopardizing Cramer's property, eliminated certain income tax deductions in certain years, and otherwise harmed her as hereinafter detailed and complained of.

5. Prior and during the year 1968, Cramer made numerous and repeated requests on Metropolitan for receipts showing what sums had been owed or paid, when and to whom payments had been made out of said "escrow" fund, and further Cramer asked for a total accounting of said "escrow" fund, which said requests Metropolitan alternately ignored completely or refused to satisfy.

6. On April 26, 1968, Metropolitan wrote a letter to Cramer refusing to furnish any receipts or copies of receipts, said letter saying, in part, as follows:

> "We are unable to send you receipts, as they must be kept in the file. Even with the receipts you would still probably have difficulty in fully understanding all of the transactions."

7. During the entire history of this mortgage loan, while Cramer paid "escrow" moneys to Metropolitan, said mortgagee-Metropolitan never furnished any receipts to morthagor-Cramer, and said mortgagor-Cramer never saw any tax bills as assessed in her name as title-holder of said property; and mortgagor-Cramer never saw any billings for insurance in her name, because Metropolitan refused to provide anything to substantiate said "escrow" as estimated and required by Metropolitan.

8. In the interim, between April 26, 1968 and May 15, 1968, Cramer spoke to various and several people connected with Metropolitan Federal Savings and Loan regarding their failure to pay taxes and insurance when due with the "escrow" funds, and also attempting to resolve disputes as to the excessive amounts of "escrow" Metropolitan was requiring (called "cushioning" in the industry), and this mortgagor-Cramer was yelled at in the following words: "What the hell do you care when we pay the taxes?" Further, on April 27, 1968, the Chairman of the Board of Directors of Metropolitan Federal Savings and Loan, JAMES I. McCLINTOCK, told Cramer that it didn't matter if the taxes were in default.

9. The culmination of the foregoing was that Cramer asked the Metropolitan people that she be permitted to pay her own taxes and insurance directly, rather than pay "escrow" for Metropolitan to mishandle, inasmuch as it was only by so doing that she could be secure in the knowledge that these liabilities were in fact properly, accurately and timely paid.

10. Without any notice of intent to

foreclose, without any warning, without any written demand for anything, Metropolitan caused to be published on May 23, 1968, in the Detroit Legal News "Notice of Mortgage Sale" as follows, in part:

"Notice of Mortgage Sale * * * Default having been made in the conditions of a certain mortgage made by VIRGINIA CRAMER to METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION * * * on which mortgage there is claimed to be due at the date of this notice (May 23, 1968) the sum of $12,519.37, and an attorney's fee as provided for in said mortgage, and no suit or proceedings at law having been instituted to recover the moneys secured by said mortgage, or any part thereof, * * * "
(emphasis added)

11. The balance on the mortgage loan as of said date of May 23, 1968, was $12,041.91 less "escrow" credit balance of $32.92, or principal debt owing of $12,008.99.

12. The foreclosure figure of $12,519.37 included amounts as follows:

"Escrow moneys" for future taxes and insurance, not yet assessed and not yet billed - - - $433.95		
Less Credit in "escrow"	32.92	$ 401.03
Interest, at 7% (contrary to note)		76.43
Principal balance owing		12,041.91
Published foreclosure amount		$12,519.37

13. No taxes or insurance amounts were due; none were assessed; none were billed; none were unpaid at the time of the foreclosure dated May 23, 1968. The next tax

billing in July, 1968, was $101.33 (which Cramer paid directly in July, 1968) and the insurance had been prepaid through and including July, 1969.

14. Metropolitan utilized the Foreclosure by Advertisement statute (MCLA 600.3201 et seq., MSA 27A.3201 et seq.) and the power of sale in the mortgage covenant and agreement to foreclosure and accelerate the payment of Cramer's own moneys for "escrow" for future payments of taxes and insurance, which are not debts, in an excessive amount ($401.03), without any prior demand or notice.

15. The excessiveness of said amount of $401.03 (called "cushioning" in the industry) is shown as follows (if Cramer had paid said $401.03):

		Escrow Balance
As of April 19, 1968, "escrow" requirements increased to $82.19 per month, and mortgagor paid $196.17 by payment-card on 4-26-68		$ 32.92
By payment cards at $82.19 per month for May through December 1968, 8 months @ $82.19		657.52
Additional $401.03 "required) for escrow		401.03
		$1,091.47
Obligations to be paid in 1968 from escrow:		
July 1968 City Tax	$101.33	
August 1968 MGIC Ins.	30.10	
December 1968 County Tax	491.09	622.52
Excessive "escrow" required by Metropolitan (by foreclosure proceedings)		$ 468.95

16. Metropolitan admits that the "escrow" funds belonging to mortgagors are invested where a profit is realized and for self-dealing for mortgagee's benefit only.

16 a. In March of 1965 Metropolitan "required" Cramer to pay a lump sum of $464.03 (which Metropolitan calculated as $13.00 per month shortgage for 18 months, or $464.03) and which Cramer disputed and re-calculated as $13.50 times 18 months - equals $243.00, and Cramer sent to Metropolitan the said amount of $243.00, together with her regular timely current monthly payment of $147.00 principal, interest and "escrow".

17. Without Cramer's accounting background and experience, she would never have detected the deception and sophisticated trickery and subterfuge which Metropolitan utilized to "cushion" the "escrow" requirements with excessive "escrow" funds.

18. That the Metropolitan people were furious with Cramer when in March or April 1965 Cramer paid said $243.00 lump sum in addition to her regular monthly installments for "escrow" and which resulted as follows:

Escrow amounts Required by Metropolitan

at closing, unverified	$ 136.50
3 years prepaid insurance	144.00
18 months @ 29.69	534.42
3-15-65 installment	43.19
additional escrow 3-15-65	464.03
	$1,322.14
1965 9 remaining months at $43.19 per month	388.71
	$1,710.85

Paid Out From Escrow		
3 years prepaid insurance	$144.00	
1963 city taxes	57.00	
1964 city taxes	57.00	
1963 county taxes	355.59	
1964 county taxes	371.43	
MGIC premium (1964)	40.62	
1965 city taxes	59.93	
MGIC premium (1965)	39.68	
		$1,125.25
(Escrow amounts required by Metropolitan, see previous page)		$1,710.85
Excessive escrow amount "required" 3-15-65		$ 585.60

Escrow Amounts Paid by Cramer		
at closing, unverified, $619.05		$ 136.50
Prepaid insurance		144.00
18 months @ $29.69		534.42
3-15-65 installment		43.19
18 months @ $13.50		243.00
		$1,101.11
1965 9 remaining months at $43.19 per month		388.71
		$1,489.82
Escrow amounts paid out from Metropolitan's figures (above)		1,125.25
Escrow surplus balance in Cramer's account 12-30-65		$ 364.57

19. That Metropolitan showed on their statement ending on December 30, 1965, the above shown escrow surplus balance in the amount of $364.57.

20. No county taxes were paid in 1963. No city or county taxes were paid in 1964. The taxes for 1965 (city) were paid when seven (7) months delinquent. Metropolitan

absorbed all penalties, interest charges and late charges on all said delinquent taxes, including for 1967. The delinquent payments were not for lack of funds, and, in fact, funds were available for the timely payments to avoid late charges and interest penalties.

21. Metropolitan's statement for Cramer's mortgage account for the year ending 1964 showed a surplus escrow balance of $513.92, with no moneys disbursed for payment of any taxes or insurance.

22. Cramer had paid to Metropolitan $934.90 interest on said mortgage during the year 1964 and where Metropolitan's statement for 1964 showed only $856.32 for the year 1964 as total interest.

23. That Metropolitan, while self-dealing with said "escrow" funds allowed taxes and insurance to become delinquent, but paid same with penalties, late charges or interest charges for said delinquent tax payments, while prior to said delinquent payments Metropolitan utilized said "escrow" funds for self-dealing purposes.

24. That on/or about May 10, 1968, Metropolitan "required" additional escrow moneys in the amount of $401.03, and at the same time refusing to substantiate their "requirements" with receipts or copies of receipts.

25. Cramer informed the people at Metropolitan that their "requirements" were inconsistent with the terms and conditions of the mortgage covenant and that their "requirements" were excessive.

26. Cramer's next current payment was due on May 15, 1968, with the terms in the promissory note allowing payment to be made during the 15 days from May 15 through and including May 30, 1968, without penalty or late charge.

27. That on/or about May 16, 1968, Metropolitan and their attorneys composed and delivered to the Detroit Legal News, the "Notice of Mortgage Sale" on Virginia Cramer's property, without notice to said Virginia Cramer, and the first insertion was published on May 23, 1968, well within the 15-day forebearance or waiver period of the mortgage note.

28. That Metropolitan refused to credit Cramer's payment made on May 29, 1968, "on account of the forelcosure."

29. On June 1, 1968, Cramer found the newspaper clipping tacked on her front doorsill entitled "Notice of Mortgage Sale" which was dated May 23, 1968, and where Metropolitan's affidavit shows that said posting was made on May 31, 1968.

30. That in June and July 1968, Cramer sent to Metropolitan two (2) separate checks for the current June and July 1968 installment payments on said mortgage note.

31. Metropolitan returned said two (2) checks for June and July 1968, but never returned Cramer's payment made on May 29, 1968, and Metropolitan also wrote to Cramer saying that no moneys were acceptable "on account of the foreclosure."

32. The said notice of foreclosure by Metropolitan was first published on May 23,

1968, and obviously it was drafted and prepared by Metropolitan at a date prior thereto; and was published also on May 30, June 6, 13, 20 and 27, July 4, 11, 18 and 25, August 1, 8 and 15, 1968, with the sale date set for August 20, 1968, and during which time Metropolitan refused to accept any moneys from Cramer.

33. Cramer then caused a Complaint to be filed in the Wayne County Circuit Court on August 12, 1968, requesting, among other relief, that the court issue a temporary restraining order enjoining the mortgage sale and/or foreclosure action. Said Complaint was amended on August 22, 1968.

34. On September 6, 1968, a "proceeding" was held where Cramer was not permitted to be heard and there was no testimony on Cramer's behalf, at which hearing the Circuit Judge determined that there was a default in the mortgage and ordered that the restraining order be dissolved, and whereby said Order was entered on September 27, 1968.

35. In said "proceeding" Metropolitan advised the Court that their claims were set forth in affidavit, and Metropolitan further advised that the said affidavit showed a "deficiency in escrow fund", but said affidavit, to wit: of John C. Denyer dated August 23, 1968, stated, in its essential portion, that Metropolitan requested of Cramer that she make certain increased and additional payments into the escrow fund, but that she failed and refused to pay them. No testimony was given in support of this contention; no showing was made that a demand has ever been hade on Cramer and/or that she had ever either failed or refused to pay; and there was no showing whatsoever that

there was any deficiency in said escrow fund. Further, the Court said "an affidavit does not mean anything."

36. Metropolitan sold Cramer's property to themselves on October 1, 1968, by Sheriff's sale where the Sheriff's Bidding Statement shows no deficiency in escrow, but instead showed an "escrow" credit balance which Metropolitan applied in reduction of the principal balance.

37. Cramer redeemed said property on June 5, 1969, by obtaining another first mortgage at a higher interest rate, with great difficulty, and at costs to her of in excess of $9,000.00, exclusive of any of the costs of litigation subsequently, and exclusive of the several areas of damages set forth in her complaint.

38. Cramer subsequently, on March 16, 1970, filed a Motion for leave to file a second amended Complaint, in pro per, when she discovered that her attorney, Abel Selburn, had abandoned the case in fraud of his client-Cramer.

39. On March 30, 1970, the successor Judge (of Judge Murphy who became deceased in 1969) ruled: "the court having previously determined on September 27, 1968, that the plaintiff was in default on her mortgage and the matter is therefore res judicata."

40. The said Order of March 30, 1970, was entered four (4) days in advance of the date scheduled for hearing of said motion, to wit: April 3, 1970, and, when this was subsequently brought to the attention of the Court, the Court, again, without hearing, entered an order nunc pro tunc, reaffirming

its original order that the matter was res judicata.

41. Metropolitan thereafter brought a Motion for Summary Judgment, and the Judge granted said motion on May 29, 1970, again based upon the holding of res judicata.

42. The foregoing matter was appealed to the Michigan Court of Appeals, and by per curiam decision the court found that the "Summary 1968 hearing on the order to show cause was not a trial hearing," that "a decision on a preliminary motion in no way effects a final decree," and that "Mrs. Cramer's evidence was not heard" and finally that "she (Cramer) was entitled to a full trial hearing on her claims that Metropolitan wrongfully foreclosed her mortgage" (emphasis supplied); the matter was reversed and remanded back to the Circuit Court.

43. In the Wayne Circuit Court, before still another Circuit Judge (the second Judge having disqualified himself), Cramer filed a second Amended Complaint, together with a Jury Demand; the said Complaint containing six (6) counts.

44. Depositions were taken under said Second Amended Complaint of both Cramer and Defendant-Roger C. Richards, President of Metropolitan, which, despite the overall evasive and uncooperative quality of Mr. Richards' answers, he did state, among other things:

(a) The policy of Metro is that they generally make demands for any escrow deficiency "for a period of time prior to a foreclosure action", and

(b) Metro's policy further is "when a loan is in default attempts are made to

correct that default and when it appears it can't be corrected the mortgagor is notified that foreclosure be started", and legal counsel takes over (emphasis supplied); and

(c) "MGIC insurance is for the protection of the lender, When we (Metro) pay it, is probably not material. We may even make a judgment not to pay it." (emphasis supplied); and

(d) It is the policy of Metro that if there is a deficiency based on improper escrow amounts "it is our general policy to work out some arrangements, particularly with large amounts, where they (mortgagors) might make additional payments to escrow through the next 12 months" (emphasis supplied).

(e) That Metropolitan did not know how the foreclosure figure of $12,519.37 (as published) was arrived at, and that they did not have records to substantiate the figure of $12,519.37 (as published in the foreclosure of Cramer's property). (Balance owing was $12,041.91)

(f) That Cramer asked members of the organization (Metro) to pay her own taxes, but that they explained that this could not be done because of (Federal) regulations as the major reason; that "We are bound by law to maintain an escrow account for the payment of taxes and insurance." and -- "Certainly I (Mr. Richards) don't know of anything in our agreements or contracts that bind us to pay taxes timely."

(g) That Metro requests from the various taxing authorities that tax bills be sent to their institution (which is why Cramer never

saw any tax bills before or after payment) and there is no violation of the law for the institution (Metro) not to pay taxes when due, and that Metro is bound to do nothing with said "escrow" moneys belonging to the mortgagor.

45. On October 12, 1971, a pretrial conference was held where the Judge characterized the suit as follows: "This is a suit to set aside a mortgage foreclosure."

46. Cramer subsequently (by her attorney Allen Counard) on January 24, 1972, filed a Motion for Summary Judgment "as to Count I," based on the argument that no default in a condition had been shown, and that even if there was a default in escrow such default was a default in a mutual covenant.

47. On February 7, 1972, a Michigan District Court Judge sitting as a Circuit Court Judge, ruled on said Summary Judgment, finding against Cramer (by attorney-Allen Counard) and granting a complete summary judgment to Metropolitan. His findings were predicated on the following mis-interpretations, mis-understandings or mis-statements of facts:

(a) The escrow clause is in fact and as a matter of law a "condition";

(b) Both parties admit there was a deficiency in said escrow account;

(c) That $619.05 was given as a down payment by Cramer (despite there was no testimony whatsoever; and $619.05 was, in fact, the closing costs which included a substantial sum in escrow; and Cramer had paid a down payment of $2,450.00 in addition

in addition to said "closing costs")

(d) "Escrow is the way of life; I am only going by the testimony here on the record that at the time of the foreclosure the escrow fund was deficient" and said Judge reinforced his statement with "the court heard this testimony"; (despite there was no testimony whatsoever) and

(e) "The Court of Appeals in reversing this case only sent it back to be granted a Jury Trial at the discretion of the Court".

(f)"Nothing was due and unpaid at the time of foreclosure. There was a surplus of the escrow account."

48. The actual figures used by Metropolitan in the Sheriff's Bidding Statement at the subsequent sale on October 1, 1968, were:

Principal balance	$12,041.91
Less credit (escrow)	2.82
Total	$12,039.09

a markedly different figure than the amount $12,519.37 stated in the "Notice of Mortgage Sale" published, first insertion on May 23, 1968; and a figure which on its face underscores and reinforces Cramer's claim that there was no deficiency in escrow at the time of the foreclosure, nor at the time of the Sheriff's sale of said mortgaged property.

49. Further, Metropolitan utilized $30.10 of mortgagor's escrow moneys to pay MGIC insurance, but which MGIC did not receive until in December 1968, considerably after the Sheriff's sale of October 1, 1968; and therefore, the credit balance in escrow should have been $32.92, instead of $2.82, on the Sheriff's Bidding Statement, which, in turn,

should have been applied in reduction of the principal balance to $12,008.99 as the accurate amount owing as a debt. Again, the $12,008.99 is a markedly different figure than the $12,519.37 stated in the published "Notice of Mortgage Sale" as of May 23, 1968.

50. There was no testimony whatsoever as relates to down payment.

51. There was no testimony whatsoever as relates to a "deficiency."

52. There was no testimony and/or evidence whatsoever, either supportive or unsupportive of the foreclosure.

53. There was a subsequent appeal to the Michigan Court of Appeals, (claim was filed April 17, 1972) and the Court of Appeals affirmed the trial court except as to Count IV, Breach of Fiduciary Duty, which was remanded back to the Circuit Court for trial.

54. Trial was held on said Count IV only, in which Cramer appeared in pro per and the jury found the Defendants (Metro) "not guilty" and a judgment of no cause of action was entered on said Count IV.

55. The matter was subsequently appealed to the Michigan Supreme Court, and the findings in the case to date were affirmed on October 6, 1977, Cramer v Metropolitan, et al, reported at 401 Mich 252.

56. Said Michigan Supreme Court decision recites, mainly, "She refused to pay escrow. * * * The foreclosure was licit." However, actually, and in fact, by sequential dates involved, Cramer refused to pay "escrow"

after the foreclosure date of May 23, 1968, not before, inasmuch as her check for the current installment for May which was paid to Metropolitan on May 29, 1968 (within the 15-day forebearance period of the mortgage note) was the first payment which did not include "escrow" and was for principal and interest only, in the amount of $103.81, but which Metropolitan never returned said check to Cramer. They are keeping the said check dated May 29, 1968, in the amount of $103.81 as evidence, probably, to try to justify their foreclosure commenced on or/before May 23, 1968, which does not justify anything, except that Cramer's contention is that she was justified in and had the right to refuse to pay "escrow" because of the mishandling by Metropolitan of said "escrow," and because of Metropolitan operating their "estortion" racket of using threats and leverage of foreclosure to obtain excessive escrow moneys and failing to pay the mortgagor's liabilities timely with said mortgagor's "escrow" moneys.

57. At the jury trial on Count IV, Breach of Fiduciary Duty, shown in the Appendix on Appeal, Volume II, at 562a (T-195 and 196) where Defendant (Metropolitan) testified as to said "escrow" funds, in August 1973, it shows:

"Q. So you consider you have some flexibility as to paying those taxes?

"A. Yes. We have a great deal of flexibility.

"Q. A great deal?

"A. Forty-five, sixty days.

"Q. But you don't have two years, do you?

"A. We have two years, yes.

"Q. You think you have two years. Do you think you can hold somebody else's money for two years when the contract says that these amounts are to be paid when due and you think you can hold them for two years?

"A. The language in the mortgage speaks for itself. If it says "when due" we are supposed to pay them when due but nobody is going to turn us away from the (State or County or City) treasurer's office if we go in a year and a half later."

58. Two rehearings were denied by the Michigan Supreme Court, on December 15, 1977 and February 1, 1978.

59. Cramer, in pro per, filed her Petition for Writ of Certiorari to the Michigan Supreme Court in the Supreme Court of the United States in time for the October 1977 term, Docket No. 77-1558, on April 27, 1978, which was denied June 12, 1978 for the reason that fraud is alleged.

60. Cramer has at various times, during her foregoing litigation history, been represented by counsel, but the majority of the time she was IN PRO PER, including most Motion appearances, the actual trial on Count IV of her Second Amended Complaint, appearances before the Michigan Court of Appeals, and her appeal to the Michigan Supreme Court.

61. It is Cramer's position that she has been denied Due Process of Law and denied the equal protection of the law, systematic-

ally and continuously throughout the eleven (11) years her "case" was before Michigan Courts, in that in all of that time (with the exception of the trial she had on – Count IV of her Second Amended Complaint -- in which "trial" she was hampered by the fact that said Count IV was interrelated to each of the other Counts in her Complaint, and, therefore, she could not adequately or properly prove the merits of it without reference to the other Counts, which privilege she was denied; and in which she was further hampered by being In Pro Per); Cramer was never allowed to offer any evidence or testimony which would have proved that Metropolitan had no basis for the foreclosure and, more glaring, no evidence or testimony was at any time offered by the Defendants- – Metropolitan to support their repeated assertion that:

"After closing, Mrs. Cramer commenced payment of principal, interest and escrow but thereafter continually failed and refused to make escrow payments as required by paragraph 2 of the Mortgage. Subsequent to her default and her failure to make the May 15, 1968 payment in a timely fashion, – Metropolitan commenced foreclosure by advertisement pursuant to the power of sale in the Mortgage. When the foreclosure was commenced, Mrs. Cramer's escrow account was deficient in the sum of $401.16.", which the attorneys for Metropolitan assert in their Brief on Appeal (page 3) in the Michigan Supreme Court, but which thereto said attorneys for Metropolitan have never presented evidence or testimony in support of their allegations.

62. It is Cramer's contention that this matter could have been simply and effectively

resolved at any time by the cimple expedient of looking at the figures involved. (See paragraphs 3, 11, 15, 18 and 48 herein, Preamble or Introductory Statement). It would have been necessary, of course, for there to have been a day in court and for both sides to have presented "their figures"; but in so doing a clean, clear, factual determination would very simply have been made and endless time, expense and aggravation could have been avoided.

63. It is Cramer's position that the action of the Michigan Supreme Court in affirming the lower court determination in the prior action, Cramer v Metropolitan et al, 401 Mich 252, constitutes the unconstitutionally deprivation of rights, privileges, opportunities and/or guarantees, under color of State law and common-law policy, in violation of the Fifth and Fourteenth Amendments to the United States Constitution and that State action or exertion of state power is involved; and further, State action is involved under color of Michigan Foreclosure by Advertisement Statute, MCLA 600.3201 et seq., MSA 27A.3201 et seq., and more specifically, with reference to "any condition of such mortgage".

64. Further, it is Cramer's contention that the Michigan Supreme Court, reported at 401 Mich 252, failed to apply the cardinal rule where the entire contract must be considered to arrive at the proper interpretation of contracts and to ascertain the intention to be gathered from the whole instrument, and, instead, that Court grossly obviated the intention of the restrictive covenant (in a mortgage) which precludes, prevents, prohibits and inhibits a mortgagor from paying her own liabilities of taxes and insurance where, after the mortgagee

fails to adhere to the implied provisions of paying taxes and insurance with the "escrow" funds collected, then the mortgagor (Cramer) would be in breach of said restrictive covenant by complying with governmental laws if Cramer paid said taxes and insurance when Metropolitan failed and neglected to pay with said "escrow" funds.

65. Alternative, as a mutual covenant Cramer's contention is that the mortgagee-Metropolitan would be required to expend funds for the payment of taxes and insurance which if the expenditure was a greater sum than the "escrow" credit balance, and resulting in a debit balance in the escrow account, it is only that debit balance which can be termed as a "deficiency" which the mortgagee is entitled to foreclose upon and accelerate the principal-debt balance together with the debit balance in escrow if the mortgagor failed to reimburse the mortgagee for said debit balance "deficiency," for the "escrow" funds. But, here, the mortgagee-Metropolitan says they are bound to do nothing with the "escrow" funds after collecting said "escrow."

66. The Michigan Supreme Court members suffer with a mental disability, obviously, in the decision reported at 401 Mich 252, and where in considering only partial of two (2) paragraphs in a contract consisting of nine (9) paragraphs, the Members of the Michigan Supreme Court cause irreparable injury "in restraint of commerce (money)" where the collector of "escrow" (mortgagee) does not pay taxes and insurance voluntarily while inhibiting the mortgagor from paying taxes and insurance. The decision of the Michigan Supreme Court, reported at 401 Mich 252 borders on insanity.

67. After the U. S. Supreme Court denied Cramer's Petition for Writ of Cert on June 12, 1978, she commenced this new action on July 14, 1978, in the Wayne Circuit Court, and Cramer applied for Leave to Appeal in the Michigan Supreme Court on (1) Order Setting Aside Default of Co-Defendant Allen Counard (Cramer's former attorney) and (2) Accelerated and/or Summary Judgment granted to Metropolitan and their attorneys as Defendants and Co-Defendants. The Michigan Supreme Court denied Leave to Appeal on February 7, 1979, together with motions denied. On February 27, 1979, Cramer filed Motion for Reconsideration of Application for Leave to Appeal and Motion to reverse, void or correct prior defective decision (reported at 401 Mich 252) and on May 3, 1979 the Court entered its Order denying all motions "because it does not appear that the questions presented should be reviewed by this Court."

68. In the interim, on February 26, 1979, Cramer hired Attorney-William R. McFadden who filed two (2) separate motions for oral argument in the Michigan Supreme Court, the second motion having been filed on May 23, 1979, and which is still pending together with Attorney-McFadden's Motion for Withdrawal as Attorney for Plaintiff (Cramer). Attorney-McFadden refused to present anything "alternatively" to the Michigan Supreme Court and refused to prepare and file pleadings in the Federal court on anything, except a "mutual covenant" and which became a glaring and serious defect and dispute between McFadden and Cramer, and currently Attorney-McFadden is and has been withholding all of Cramer's papers, documents and copies of pleadings which he refuses to relinquish, even when Cramer needs them for timely preparation and filing in the Federal

court, and where Attorney-McFadden apparently is withholding Cramer's file as a means of leverage to prevent the preparation and filing of pleadings timely in the Federal court, unless Cramer allows said Attorney-McFadden to voluntarily withdraw or that the Michigan Supreme Court enters an Order for Withdrawal of Attorney-McFadden. Therefore, Cramer is severely handicapped now in preparation of these pleadings for filing in the Federal Court. However, the Complaint and motions and other matters are as follows:

COMPLAINT FOR DECLARATORY JUDGMENT, REVERSAL OF MICHIGAN SUPREME COURT DECISION, INJUNCTIVE RELIEF, (Intervention) AND MONEY DAMAGES FOR INJURIES TO PERSON AND PROPERTY

Now comes Plaintiff Virginia Cramer, in pro per, and for her cause of action shows unto this Honorable Court as follows:

1. JURISDICTION AND VENUE

1.1 Your federal plaintiff (defendant in wrongful foreclosure) is a natural born citizen of the United States, maintains residence in Dearborn Heights, Michigan, and has resided in the State of Michigan, County of Wayne, for more than sixty (60) years, continuously. She is not represented by counsel, nor has she been able to obtain competent counsel, and she has never had her day in court in the State courts on said foreclosure matter, although at intervals she had engaged the services of three (3) different lawyers (who are now named as co-defendants, as more fully set forth herein).

1.2 That the defendants Metropolitan Savings and Loan Association a/k/a Metropolitan Federal Savings and Loan Association is

or was a United States Corporation and together with its officers named, JAMES I. McCLINTOCK, ROGER C. RICHARDS and JOHN C. DENYER, have its principal place of business located in the City of Farmington, Oakland County, Michigan, the said named officers at all times pertinent hereto.

1.3 That the Co-Defendants named, McClintock Donovan Carson & Roach, James I. McClintock, William P. Thorpe and Michael Doelle are the law firm and individual attorneys representing and/or did represent the defendants Metropolitan Savings and Loan Association a/k/a Metropolitan Federal Savings and Loan Association involving primarily the wrongful foreclosure and incidental and consequential matters, have their offices located in the City of Detroit, State of Michigan, at all times pertinent hereto.

1.4 That the Co-Defendants named, Abel Selburn, Allen Counard and William R. McFadden, all of whom have their offices located in the County of Oakland, State of Michigan, are the three (3) individual attorneys whom your Plaintiff (defendant in wrongful foreclosure action) engaged the services of, specifically, as to said foreclosure matter, and they are at all times pertinent hereto.

1.5 That the Co-Defendant Federal Home Loan Bank Board and by its Director and/or Official and/or Officer in Charge and created by Act of Congress, have their place of business located in Washington, District of Columbia, where the federal regulations are promulgated, pursuant and by virtue of the Home Owners Loan Act of 1933, 12 USCA 1421, et seq. 47 Stat. 725; 12 USCA 1461 et seq., 48 Stat. 127, at all times pertinent hereto.

1.6 That the Co-Defendants Justices of the Michigan Supreme Court, Mary S. Coleman, Thomas Giles Kavanagh, Charles L. Levin, John W. Fitzgerald, James L. Ryan, Blair Moody, Jr., have their offices of place of business located in/and about Lansing, State of Michigan, at all times pertinent hereto .

1.7 Federal jurisdiction is founded on the extant controversy of a civil rights question and actual controversy on the enforcement and application of MCLA 600.3201 et seq., MSA 27A. 3201 et seq., entitled "Foreclosure by Advertisement" statute, and the United States Constitution, Amendments Fifth and Fourteenth, and the Michigan Constitution of 1963, Art. 1, Sec. 17.

(a) U.S. Constitution, Amendment Five, which provides, in part that "no person shall be * * * deprived of * * * property, without due process of law; nor shall private property be taken for public use, without just compensation."

(b) U.S. Constitution, Amendment Fourteen, which provides in part that "No State shall make or enforce any laws which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

(c) 12 USCA 1454, et seq. Purchase and sale of mortgages, residential mortgages; conventional mortgages, terms and conditions of sale or other disposition, authority to enter into, perform, and carry out transactions.

(d) 12 USCA 1461, et seq., providing for the establishment and regulation of Federal Savings and Loan Associations, local mutual thrift institutions.

(e) 12 USCA 1701, et seq., providing for the "National Housing Act" wherein the authority for and regulation of government insured mortgages is contained.

(f) 42 USCA 1983 providing as follows: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

(g) 42 USCA 1985, et seq., providing recovery of damages occasioned by injury or deprivation, against any one or more of the conspirators in conspiracy to interfere with civil rights, obstructing, or defeating, in any manner, the due course of justice, with intent to deny the equal protection of the laws, or to injure any citizen or his property for lawfully enforcing, or attempting to enforce the right of any person to the equal protection of the laws.

(h) 28 USCA 2201, et seq. (Chapter 151) Declaratory Judgments, providing for creation of remedy.

(i) 15 USCA Section 1, et seq., providing for punishment of fine or imprisonment for engaging in contracts, combinations or otherwise, or conspiracy, to monopolize

(j) 28 USCA 1443 providing for removal of civil rights cases, civil action, to the district court of the United States, commenced in a State court where it is pending:

(1) Against any person who is denied or cannot enforce in the court of such State a right under any law providing for the equal civil rights of citizens of the United States, * * * .

(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.

(k) 28 USCA 1343, providing for original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in Section 1985 of Title 42; * * * for redress of deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons * * * .

1.8 Your federal petitioner-plaintiff (defendant in wrongful foreclosure action) claims federal jurisdiction and intervention under the above enumerated and various provisions, and 28 USCA 2284, (2) action against a State, or officer or agency thereof.

1.9 That this Court has jurisdiction of this matter by virtue of the Federal questions involved.

1.10 The pending case presents an actual controversy of irreparable injury and a showing of bad faith enforcement of MCLA 600.3201 et seq., MSA 27A.3201 et seq., entitled "Foreclosure by Advertisement" involving a question on the constitutionality of said state statute on its face or as applied, together with the State common-law policy of private right to contract (mortgage covenant and agreement involved herein).

2. CAUSE OF ACTION and FEDERAL INTERVENTION

2.1 That the Plaintiff herein, on July 29, 1963, did borrow from the Defendant-Metropolitan Federal Savings and Loan Association, the sum of Sixteen Thousand Five Hundred ($16,500.00) Dollars, with interest thereon at the rate of five and three-quarters (5-3/4%) per cent per annum, and seven (7%) per cent per annum during any period of default.

2.2 That in connection with said loan, Plaintiff signed a "Mortgage Note" and a "Mortgage Agreement," granting Defendant-Metropolitan a mortgage on certain property located in the City of Dearborn Heights, Wayne County, Michigan.

2.3 That subsequently, to wit: on May 23, 1968, Defendant-Metropolitan instituted foreclosure proceedings by publishing a "Notice of Mortgage Sale" in the Detroit Legal News, without good cause and with willful intent to damage your Plaintiff, as more fully set forth herein.

2.4 That your Plaintiff insituted a suit in Wayne County Circuit Court to enjoin the Defendant-Metropolitan from proceeding with said foreclosure, that being her only remedy at that time.

2.5 That your Plaintiff was denoted as "Plaintiff" in those proceedings as well as in these proceedings, as a procedural quirk, inasmuch as she is actually, and in reality, a defendant, defending herself from the legal-illegal action instituted by the Defendant-Metropolitan as mortgagee.

2.6 That your Plaintiff incorporated herein by reference the pleadings of that cause, being Wayne County Circuit Court No. 115-792, including the Appellate proceedings therein had. (See Preamble herein.)

2.7 That your Plaintiff, throughout said proceedings, was denied certain rights guaranteed by the United States Constitution and the laws of the United States, including, but not limited to, deprivation of due process of law and denial of the equal protection of the law in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

3. WRONGFUL FORECLOSURE, SLANDER OF TITLE

3.1 Your Plaintiff realleges each and every paragraph of the foregoing as though each paragraph were restated verbatim herein.

3.2 That during the period of time from the inception of the mortgage to the date of the foreclosure, your Plaintiff diligently performed her covenant, the performance of which was to pay "escrow" funds to the Defendant-mortgagee (Metropolitan) and which

said Plaintiff-mortgagor did pay each and every month without fail according to the payment-cards furnished to her by said Metropolitan.

3.3 That during the period of said mortgage, prior to the foreclosure date of May 23, 1968, the defendant-Metropolitan credited your Plaintiff's account with 130 monthly installments, although by the terms of the mortgage note, only 56 payments would have been required, where Plaintiff-mortgagor had considerably paid ahead and more than she was required to pay.

3.4 That there arose a dispute between the Plaintiff-mortgagor and the Defendant-mortgagee over the handling, or mis-handling, of the escrow funds, wherein Plaintiff deposited monthly, each and every month without fail, sums of money for the payment of real estate taxes and insurance.

3.5 That the Defendant-Metropolitan had consistently made such tax and insurance payments in an untimely manner, reflecting upon the standing and credit of the Plaintiff.

3.6 That your Plaintiff-mortgagor requested that she be permitted to pay said taxes and insurance directly, rather than in "escrow" funds to Defendant-Metropolitan where said mortgagee failed and refused to furnish receipts or copies of receipts to account properly for Plaintiff-mortgagor's "escrow" funds and liabilities for taxes and insurance.

3.7 That by manipulation of figures involving trickery, subterfuge, and miscalculations by the Defendant-Metropolitan's estimates, from time to time Metropolitan required "excessive" amounts (called

"cushioning" in the industry) to be deposited in said "escrow" account, contrary to the terms and conditions of the mortgage covenant and agreement, which Plaintiff disputed.

3.8 That Plaintiff's payments were due on the 15th day of each month and could be paid during the following 15-day period until the 30th day of each month without the addition of "late charges" in accordance with the terms of the mortgage note.

3.9 That while waiting for the Defendant-Metropolitan to answer her formal request to make tax and insurance payments directly (instead of by depositing "escrow" moneys), the Plaintiff, on May 29, 1968, made the May payment of principal and interest only, in the amount of $103.81, and which was the first payment, in the history of the mortgage period of almost five (5) years priorly, which did not include any "escrow."

3.10 That, subsequently, your Plaintiff discovered that the Defendant-Metropolitan had initiated foreclosure proceedings, by advertisement, on a day well prior to May 23, 1968, the date of the first insertion of the "Notice of Mortgage Sale" in the Detroit Legal News, and at a time during which the Plaintiff-mortgagor was not in default, and without first making demand or otherwise notifying Plaintiff that foreclosure proceedings would be initiated, and without first giving Plaintiff an opportunity to cure any alleged default.

3.11 That as a result of Defendant-Metropolitan's illegal and im proper actions, your Plaintiff's dignity and reputation have been maliciously damaged, permanently scarred and irreparably injured; that your Plaintiff has suffered damages in that she was forced to remortgage her property, at

a higher interest rate and together with "foreclosure costs and attorney fees" and additional closing costs for the remortgage; that your Plaintiff has suffered damages in that she has been forced to expend large sums of money for attorney fees, court costs and other litigation expenses involved in defending hereself against the illegal actions of the Defendant-Metropolitan and their attorneys, slandering title of plaintiff's property.

4. ACTUAL CONTROVERSY - STATE ACTION INVOLVED

4.1 The actual controversy arises under color of State Statute, MCLA 600.3201 et seq., MSA 27A.3201 et seq., entitled "Foreclosure by Advertisement."

> Sec. 3201 Foreclosure of mortgages containing power of sale;right
>
> "Every mortgage of real estate, containing therein a power of sale, upon default being made in any condition of such mortgage, may be foreclosed by advertisement, in the cases and in the manner hereinafter specified." (emphasis added)
>
> Sec. 3204 "To entitle any party to give a notice as hereinafter prescribed, and to make such foreclosure, it shall be requisite:
> (1) That some default in a condition of such mortgage shall have occurred, by which the power to sell became operative; * * * ." (emphasis added)

4.2 The Defendant-Metropolitan and their attorneys are requiring your Plaintiff to defend herself against an illegitimate charge.

4.3 The Courts should not require your Plaintiff to defend herself against an illegitimate charge.

4.4 State action (exertion of state power), in violation of the Fourteenth Amendment to the U. S. Constitution, is involved by application of "in any condition" as to said "escrow" moneys, legislatively, judicially, and by executive action in the Sheriff's sale, as unconstitutional action under color of law.

4.5 That application of the "Foreclosure by Advertisement" statute relative to "escrow" moneys as a "condition" denies - the plaintiff-mortgagor the equal protection of the law and is unconsitutional action under color of state law; and that, even if your Plaintiff-mortgagor did refuse to pay escrow prior to the publication of "Notice of Mortgage Sale" the foreclosure by advertisement statute, as applied, was unconstitutional action and the foreclosure was illegal.

4.6 That your Plaintiff-mortgagor was deprived of an unquestionably guaranteed right to pay her own liabilities for taxes and insurance, was a denial of protection from unconstitutional action under color of state law, and in violation of the Fourteenth Amendment of the United States Constitution.

4.7 There is no time limit on attacking a void judgment, "voidable" on its face as abridging rights guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution, and the Michigan Supreme Court decision reported at 401 Mich 252 should be voided.

4.8 That the Defendant-Metropolitan and their attorneys are the wrongdoers who foreclosed the mortgage as a means of extorting Plaintiff's own money for the purpose of utilizing said mortgagor's money for the Defendant-mortgagee's own benefit, not to pay taxes or insurance since no taxes were assessed or billed; no insurance was due; nothing was due and nothing was unpaid; there was a surplus credit balance in her "escrow" account; there was no "deficiency."

5. WILLFUL AND MALICIOUS TORT

5.1 Plaintiff realleges paragraph 1.1 through 4.8 incorporated by reference herein of Counts 1 through 4 as though each paragraph were restated herein.

5.2 That your Plaintiff-mortgagor alleges that the actions of the Defendant-Metropolitan and their attorneys were willful and malicious, with intent of malice, and were committed with the express intent of doing harm to your Plaintiff.

5.3 That pursuant to the provisions of 42 USCA 1983,

> "Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit at equity, or other proper proceeding for redress."

That pursuant to the provisions of 28 USCA

1343,

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege of immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, * * * .

5.4 That the Defendants-Metropolitan and their attorneys, and each of them, had knowledge that they wrongfully foreclosed the mortgage where Plaintiff had an exemplary payment record; that the Defendants-Metropolitan and their attorneys, co-defendants herein, failed to prevent and failed to aid in the preventing of said wrongs, as co-conspirators, and had knowledge of the occurrences and power to prevent, but were

committed with the intent of malice and doing harm to your Plaintiff.

6. FRAUD, CONCEALMENT AND DECEPTION - ATTORNEY MALPRACTICE

6.1 Plaintiff realleges paragraph 1.1 through 5.4 incorporated by reference herein as though each paragraph were restated verbatim.

6.2 That co-defendant Abel Selburn knew of the damage and harm occurring against Plaintiff, and said injury to her person and property would continue to occur, when Plaintiff engaged the legal services of said attorney-Abel Selburn and which he did nothing to prevent the occurrence of damage and harm to Plaintiff.

6.3 That Plaintiff hired attorney-Selburn at almost the beginning of the foreclosure action by Defendants-Metropolitan, to wit: in August, 1968, and said attorney-Abel Selburn had the knowledge and means and power to prevent the damage and harm at the beginning of said occurrence.

6.4 That attorney-Abel Selburn abandoned the case in fraud of his client, Virginia Cramer, and failed and neglected to prevent damage and harm to said client, Plaintiff herein.

6.5 That by fraud and deceit, attorney-Abel Selburn led Plaintiff-Cramer to believe that he was acting on behalf and in her best interests, when, in fact, attorney-Abel Selburn neglected and deliberately failed to act in the interests of client-Cramer.

6.6 That after almost eighteen (18) months had elapsed after Plaintiff-Cramer had

hired said attorney-Abel Selburn, she discovered that said attorney-Abel Selburn had filed no pleadings in the Court in the prior action involving said mortgage foreclosure on Plaintiff's property.

6.7 That on/or about April or May 1970, Plaintiff engaged the services of said attorney-Allen Counard, in said prior action Wayne Circuit Court No. 115-792.

6.8 That said attorney-Allen Counard was the attorney of record for the Plaintiff Virginia Cramer from about May 1970 through and including about March 1972, in said prior action.

6.9 That said attorney-Allen Counard, herein, was negligent and failed to investigate facts and law in said matter, and violated Canons of Professional Responsibility, as follows:

DR 6-101 Failing to Act Competently

(A) A lawyer shall not:

(1) Handle a legal matter which he knows or should know that he is not competent to handle, without associating with him a lawyer who is competent to handle it.

(2) Handle a legal matter without preparation adequate in the circumstances.

(3) Neglect a legal matter entrusted to him.

DR 6-102 Limiting Liability to Client

(A) A lawyer shall not attempt to exonerate himself from or limit his liability to his client for his personal malpractice.

DR 7-101 Representing a Client Zealously

(A) A lawyer shall not intentionally:

(1) Fail to seek the lawful objectives of his client through reasonably available means permitted by law * * * .

(2) Fail to carry out a contract of employment entered into with a client for professional services * * * .

(3) Prejudice or damage his client during the course of the professional relationship, * * * .

DR 7-102 Representing a Client Within the Bounds of the Law

(A) In his representation of a client, a lawyer shall not:

* * *

(2) Knowingly advance a claim * * * that is unwarranted under existing law, * * *.

(B) A lawyer who received information clearly establishing that:

* * *

(2) A person other than his client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

DR 7-106 (C) In appearing in his professional capacity before a tribunal, a lawyer shall not:

(1) State or allude to any matter that he has not reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence.

6.10 That the said co-defendant, attorney-Allen Counard, was negligent and failed to investigate facts and law in said matter involving an Order entered on September 27, 1968, in said prior action, thereby violating DR 6-101 (A) (1), (2) and (3).

6.11 That the said attorney-Allen Counard was negligent and knew or should have known that the defendants-Metropolitan and their attorneys (co-defendants herein), in violation of statutory provisions MCLA 600.6052, MSA 27A.6052; MCLA 600.2431, MSA 27A.2431; and MCLA 600.3216, MSA 27A.3216 had conducted a mortgage foreclosure sale on October 1, 1968, through the Sheriff's office, and thereby co-defendant Allen Counard violated DR 7-101 (A) (1), (2) and (3).

6.12 That co-defendant-attorney Allen Counard had failed and neglected to prepare and file proper pleadings to litigate said statutory violations of defendants and co-defendants herein, in the Wayne Circuit Court and to allow for appeal as to said statutory violations in a wrongful mortgage foreclosure action, and thereby co-defendant Allen Counard violated canons of professional responsibility DR 7-101 (A) (1), (2) and (3).

6.13 That instead of investigating facts and law in said prior action 115-792, co-defendant Allen Counard, took a matter on appeal as to the filing of a Second Amended Complaint, without taking into account the Order entered dated September 27, 1968, and the violations of statutory provisions thereunder, and thereby attorney-Allen Counard violated DR 7-102 (A) (2), where the Second Amended Complaint was filed and could not be heard unless the wrongful foreclosure were set aside under Michigan

case law.

6.14 That on/or about August 1971, co-defendant Allen Counard failed and neglected to investigate facts and law, where in pre-trial proceedings in the Wayne Circuit Court a judge's pretrial statement indicated that "this is a suit to set aside a foreclosure" and said co-defendant Allen Counard failed and neglected to prepare and file pleadings to set aside the foreclosure, and thereby violating DR 6-101 (A) (1), (2) and (3), DR 6-102 (A), DR 7-101 (A) (1), (2), and (3), of the canons of professional responsibility.

6.15 That on/or about August 1971, co-defendant Allen Counard failed to investigate facts and law, and regarding an alleged "deficiency" in plaintiff's escrow account involving said wrongful foreclosure and where defendants and co-defendants (Metropolitan) did not show any such "deficiency" in the Sheriff's Bidding Statement for said mortgage sale, thereby said sale constituting fraud, concealment or deception, and thereby co-defendant Allen Counard violated DR 6-101 (A) (1), (2) and (3), DR 7-101 (A) (1), (2) and (3), of the canons of professional responsibility.

6.16 That on/or about May 1970 through August 1971, co-defendant Allen Counard failed and neglected to file with the court proper pleadings to set aside the foreclosure and to litigate an alleged "deficiency" on wrongful foreclosure, where there was no such "deficiency" as fraudulently and deceptively claimed by the defendants (Metropolitan) and co-defendants, their attorneys, herein, and thereby co-defendant Allen Counard violated DR 7-101 (a) (1), (2) and (3) of the canons of professional responsibility.

6.17 That throughout the period of time, from about April 1970 through March 1972, co-defendant Allen Counard failed and neglected to file proper pleadings with the court to set aside a wrongful foreclosure, and instead litigated the matter of a covenant and "even admitting a deficiency", where there was no such "deficiency" and defendants and co-defendants had ultimately claimed no such "deficiency" in the Sheriff's Bidding Statement of October 1, 1968, and thereby co-defendant Allen Counard Violated DR 7-102 (A) (2).

6.18 That during the period of February and March 1972, in matters before the Wayne Circuit Court prior action 115-792, while litigating the matter of a "deficiency" when, in fact, there was no such "deficiency" in the unwarranted foreclosure action, co-defendant Allen Counard further litigated the matter of a covenant and had failed and neglected to file pleadings to set aside the wrongful foreclosure so as to properly litigate the alleged "deficiency" and where there was no such "deficiency" as fraudulently or deceptively claimed by the defendants-Metropolitan and their attorneys, co-defendants herein, and thereby co-defendant Allen Counard violated DR 7-101 (A) (1), (2) and (3); DR 7-102 (A) (2) of the canons of professional responsibility.

6.19 That subsequently in about March 1972, plaintiff-Cramer could no longer afford to pay such attorney fees to said co-defendant Allen Counard herein, and plaintiff dismissed said co-defendant attorney-Allen Counard.

6.20 That subsequently in October or November 1977, plaintiff furnished a copy of the Michigan Supreme Court decision

dated October 6, 1977, where said Michigan Supreme Court deemed the Order of September 27, 1968, to be a judgment by execution in the Wayne Circuit Court, and that by Plaintiff "refusing to pay escrow" the foreclosure was licit.

6.21 That during the proceedings in Wayne Circuit Court there was never any testimony given or implied that "she refused to pay escrow", as fully known or should have been known by the defendants, co-defendants and co-defendant Allen Counard herein.

6.22 That, in fact, plaintiff had paid "escrow" each and every month without fail by installment payments on the mortgage covenant pertinent herein and by monthly payment cards, and plaintiff had paid additional sums for "escrow" over and above the regular monthly installment payments, as fully known or should have been known by the defendants, co-defendants and co-defendant Allen Counard herein.

6.23 That the plaintiff-Cramer, in fact, had stopped paying "escrow" to defendant-corporation Metropolitan Federal Savings and Loan after the foreclosure publication of May 23, 1968, and not before, as fully known or should have been known by the defendants, co-defendants and co-defendant Allen Counard herein.

6.24 That the said co-defendant, Allen Counard, upon receiving the copy of the Michigan Supreme Court decision of October 6, 1977, violated DR 7-102 (B) (2) by failing and neglecting to inform the Michigan Supreme Court that a fraud had been perpetrated upon said tribunal, and thereby co-defendant Allen Counard further violated DR 6-102 (2) by failing and refusing to assist your plaintiff-Cramer in matters

pertaining to said perpetrated fraud upon said tribunal.

6.25 That the said co-defendant Allen Counard, instead of informing the Michigan Supreme Court of said fraud perpetrated upon said tribunal, wrote your Plaintiff a letter refusing to represent Plaintiff, and subsequently co-defendant Allen Counard told your Plaintiff herein that she had been "screwed," and thereby again violating DR 6-102 (2) and DR 6-101 (3), of the canons of professional responsibility.

6.26 That the said co-defendant Allen Counard, litigated matters before a tribunal, in the failure and neglect to litigate the setting aside of a wrongful foreclosure, and thereby said co-defendant Allen Counard litigated matters that could not be supported by admissible evidence unless the wrongful foreclosure were set aside, and thereby said co-defendant Allen Counard violated DR 7-106 (C) (1), DR 6-101 (A) (1) (2) (3), DR 7-101 (A) (1) (2) (3), DR 7-102 (A) (2), of the canons of professional responsibility, and thereby deceiving your plaintiff.

6.27 That the aforementioned violations on the part of co-defendant Allen Counard prejudiced and damaged plaintiff in matters pertinent to said wrongful foreclosure and plaintiff seeks recovery of said damages so wrongfully incurred and sustained.

6.28 That this claim and cause of action accrues to Plaintiff-Cramer from the October 6, 1977 Michigan Supreme Court decision, reported at 401 Mich 252, and prior thereto.

7. FRAUD, CONCEALMENT OR DECEPTION - ATTORNEY MALPRACTICE McClintock Donovan Carson & Roach, Michael Doelle and William P. Thorpe

7.1 Plaintiff realleges paragraphs 1 through 6.28 incorporated by reference herein as though each paragraph is restated verbatim.

7.2 That co-defendants McClintock Donovan Carson & Roach was and is a law firm, previously known as McClintock Fulton Donovan & Waterman, and have their offices located in the City of Detroit, County of Wayne, State of Michigan, at all times pertinent hereto.

7.3 That defendant and co-defendant James I. McClintock was and is Chairman of the Board of Directors of Metropolitan Savings and Loan Association and was and is also the senior member of the law firm McClintock Donovan Carson & Roach, previously known as McClintock Fulton Donovan & Waterman, and he has his offices located in the City of Detroit, County of Wayne, State of Michigan, at all times pertinent hereto.

7.4 That co-Defendant Michael Doelle, at the pertinent times herein, was a member of said law firm McClintock Fulton Donovan & Waterman, in Detroit, Michigan, at all times pertinent hereto.

7.5 That co-defendant William P. Thorpe is and was a member of said law firm McClintock Donovan Carson & Roach, at the pertinent times herein, and at all times pertinent hereto.

7.6 That on May 23, 1968, said co-defendants herein, in representing James I. McClintock and Metropolitan Federal Savings

and Loan Association a/k/a Metropolitan Savings Association, defendants herein, by fraud, concealment or deception, commenced a foreclosure by advertisement against plaintiff Virginia Cramer, mortgagor, alleging "default" in a mortgage account and "deficiency" in moneys secured by the mortgage covenant and agreement.

7.7 That subsequently in prior action Wayne Circuit Court No. 115-792 on September 6, 1968, where defendant-Metropolitan Federal Savings and Loan by John C. Denyer testified as to a "shortage" and "requirements" involving "escrow" moneys as to a mortgage covenant and agreement between Plaintiff-Cramer and Defendant-Metropolitan, said co-defendant Michael Doelle, attorney at law, alleged a "deficiency" in Plaintiff-mortgagor's "escrow" account as their basis for foreclosure by advertisement in the published "Notice of Mortgage Sale" figure of $12,519.37, under date of May 23, 1968.

7.8 That co-defendants Michael Doelle and McClintock Donovan Carson & Roach on September 27, 1968, caused a fraudulent Order to be entered in the Wayne Circuit Court alleging that plaintiff-Cramer was in "default" on the mortgage covenant and agreement.

7.9 That said Order dated September 27, 1968, is absent of any date or time as to a mortgage sale.

7.10 That subsequently on October 1, 1968, co-defendants McClintock Donovan Carson & Roach and Michael Doelle caused a fraudulent Sheriff's Sale of plaintiff's property and submitted a Sheriff's Bidding Statement where there was no such "deficiency" claimed in the amount of Bid for $12,611.46, and that said amount bid did not

include any such "deficiency" as alleged previously which was defendants and co-defendants basis for foreclosure.

7.11 That the foreclosure proceedings and the Sheriff's Sale was effected by fraud, concealment or deception, for the reason that no such "deficiency" existed.

7.12 That plaintiff's mortgage payments by monthly installments were currently made during the entire term of said mortgage and plaintiff's monthly installment payments always included principal, interest and "escrow" amounts for each and every monthly installment payment, and plaintiff never failed to pay "escrow" each and every month during the term of said mortgage between Plaintiff and defendants-Metropolitan herein, prior to the foreclosure date of May 23, 1968.

7.13 That in addition to regular monthly installment payments of interest, principal and "escrow" plaintiff had paid other amounts for the escrow account separate and apart from the monthly installment payments, during the term of the mortgage, prior to the published foreclosure date of May 23, 1968.

7.14 That plaintiff's monthly installment payments were currently made through and including May 14, 1968, as shown by defendant-corporation Metropolitan Federal Savings and Loan records.

7.15 That plaintiff had paid to defendant-corporation, the following amounts for January, February, March and April, 1968, immediately prior to the foreclosure publication date of May 23, 1968:

BY PAYMENT CARDS FURNISHED BY DEFENDANT-CORPORATION		PRINCIPAL, INTEREST & "ESCROW" TOTAL AS REQUIRED BY DEFENDANTS	PLAINTIFF PAID
1968			
January	$150.00	$150.00	$238.47
February	150.00	150.00	239.75
March	154.00	154.00	245.04
April	186.00	186.00	196.17

7.16 That had there been a valid "deficiency" in the "escrow" account of plaintiff-Cramer, said Defendants-Metropolitan were bound by the conditions in the mortgage covenant to apply such excess amounts paid by plaintiff, as above shown, to cover any valid "deficiency."

7.17 That the defendant-Metropolitan alleged a "shortage of requirements" (which was not a "deficiency") as of May 10, 1968, in the amount of $401.03, and which said amount was included in the published foreclosure figure of $12,519.37, dated May 23, 1968.

7.18 That for the reason that Plaintiff's payment for May 15, 1968, was not made on said date of May 15, 1968, defendants and co-defendants herein commenced the foreclosure by advertisement on/or about May 16, 1968, and said publication first appeared under date of May 23, 1968, by fraud, deception and/or attorney malpractice.

7.19 That the terms of the mortgage note allowed Plaintiff-mortgagor to pay a current monthly payment from the 15th through the 30th of each month (fifteen-

day period) without penalty or late charge.

7.20 That the defendants' (Metropolitan) policy was to "amortize" monthly installments for the "escrow" account which was the reason that plaintiff's April 1968 payment was increased to $186.00 from the March 1968 installment of $154.00.

7.21 That the defendants and co-defendants refused to accept plaintiff's current payment made on May 29, 1968, "on account of the foreclosure," and subsequently also refused to accept payments from plaintiff for June 1968 and July 1968, "on account of the foreclosure."

7.22 That three (3) days after the entry of the Order dated September 27, 1968, in the Wayne Circuit Court civil action 115-792, the co-defendants herein effected a Sheriff's sale of plaintiff's property on October 1, 1968, in violation of MCLA 600.6052; MSA 27A.6052, and without any notice, under execution of said Order dated September 27, 1968.

7.23 That no "deficiency" is shown on the Sheriff's Bidding Statement, as priorly fraudulently and deceptively claimed by co-defendants (attorneys) herein, and thus, no such "deficiency" existed under said foreclosure action.

7.24 That the defendants and co-defendants herein had perpetrated a fraud upon the court by alleging a "deficiency" in plaintiff's escrow account, when, in fact, there was a surplus credit balance in said "escrow" account.

7.25 That the co-defendant Michael Doelle had perpetrated a fraud upon the court by alleging that Plaintiff had "refused" to pay escrow, when defendant-corporation's (Metropolitan's) records show that plaintiff had paid "escrow" each and every month without fail.

7.26 That the co-defendants, McClintock Donovan Carson & Roach and Michael Doelle and William Thorpe, herein, violated canons of professional responsibility, as follows:

DR-7-102 Representing Client Within the Bounds of the Law

(A) In his representation of a client, a lawyer shall not:

(1) * * * assert a position, conduct a defense * * * or take other action on behalf of his client when he knows or when it is obvious that such action would serve merely to * * * maliciously injure another.

(2) Knowingly advance a claim or defense that is unwarranted under existing law * * *

(3) Conceal or knowingly fail to disclose that which he is required by law to reveal.

(4) Knowingly use * * * false evidence.

(5) Knowingly make a false statement of law or fact.

(6) Participate in the creation or preservation of evidence when he knows or it is obvious that the evidence is false.

(7) Counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent.

(8) Knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule.

(B) A lawyer who receives information clearly establishing that:

(1) His client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon his client to rectify the same, and if his client refuses or is unable to do so, he shall reveal the fraud to the affected person or tribunal.

(2) A person other than his client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

DR 7-106 (C) In appearing in his professional capacity before a tribunal, a lawyer shall not:

(1) State or allude to any matter that he has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence.

7.27 That the Michigan Supreme Court, in Cramer v Metropolitan Savings and Loan Association, et al, 401 Mich 252, has based their decision on the fraud and deception of the co-defendants (attorneys) herein, to wit: "She (Plaintiff) refused to pay escrow." That the records show that Plaintiff paid "escrow" each and every month without fail, and also paid other amounts of

"escrow" to the defendant-corporation (Metropolitan), separate and apart from the monthly installment payments.

7.28 That the defendants and co-defendants herein commenced the premature, precipitous and fraudulent foreclosure on May 23, 1968, and where each and every monthly installment payment made by plaintiff-Cramer and accepted by defendant-Metropolitan included "escrow" prior to said date of May 23, 1968.

7.29 That the plaintiff's payment of May 29, 1968, did not include any "escrow" which the defendant-Metropolitan refused to accept "on account of the foreclosure" and thus, the co-defendants (attorneys) herein perpetrated a fraud upon a tribunal, namely, the Michigan Supreme Court, and in violation of DR 7-102 (A) (1), (2), (3), (4), (5), (6) (7) (8) and DR 7-102 (B) (1) and (2).

7.30 That the co-defendant Michael Doelle, together with co-defendant William P. Thorpe and Co-defendants McClintock Donovan Carson & Roach, committed and perpetrated fraud upon the court and deceived the court by concealment and fraud, and violated canons of professional responsibility DR 7-102 (A) (1), (2), (3), (4), (5), (6), (7), (8), and DR 7-102 (B) (1) and (2).

7.31 That the defendants and co-defendants never entered any testimony, proof, exhibits, or other admissible evidence to support their claim or defense that "she refused to pay escrow" and thus, by the co-defendants fraudulent statements in their brief to the Michigan Supreme Court, said entire action is and was a perpetration of fraud upon the court.

7.32 That co-defendant William P. Thorpe, in his Brief and Appendix on Appeal for Appellees, perpetrated a fraud upon the Michigan Supreme Court by his statements as follows:

> "After closing, Mrs. Cramer commenced payment of principal, interest and escrow but thereafter continually failed and refused to make escrow payments as required by paragraph 2 of the Mortgage. Subsequent to her default and her failure to make the May 15, 1968 payment in a timely fashion, Metropolitan commenced foreclosure by advertisement pursuant to the power of sale in the Mortgage. When the foreclosure was commenced, Mrs. Cramer's escrow account was deficient in the sum of $401.16 * * * ."

7.33 That co-defendant William P. Thorpe perpetrated a fraud upon the Michigan Supreme Court, when he knew that Plaintiff never refused and never failed to pay "escrow" and that Plaintiff had paid to the defendants-Metropolitan considerably more than she was required to pay by the payment cards for monthly installments as furnished by the defendant-Metropolitan.

7.34 That co-defendant William P.Thorpe perpetrated a fraud upon the Michigan Supreme Court, when he knew that defendants and co-defendants claim of a "deficiency" in "escrow" in the amount of $401.03 as their basis for foreclosure is not included in the Sheriff's Bidding Statement in the amount of $12,611.46, and therefore, no such "deficiency" of $401.03 existed.

7.35 That co-defendant William P.Thorpe perpetrated a fraud upon the Michigan Supreme Court, when he knew that the defendants

were requiring excessive "escrow" and their method of computing "escrow" is contrary to the terms and conditions of the mortgage covenant and agreement, and that said falsely claimed "deficiency" could not be claimed in the Sheriff's Bidding Statement.

7.36 That this claim and cause of action accrues to Plaintiff and results from the October 6, 1977 Michigan Supreme Court decision reported at 401 Mich 252.

8. CONSPIRATORS - OBSTRUCTIONISTS OF JUSTICE

8.1 42 U.S.C.A. 1985, et seq., provides for recovery of damages occasioned by injury or deprivation, against any one or more of the conspirators in conspiracy to interfere with civil rights, obstructing, or defeating, in any manner, the due course of justice, with intent to deny the equal protection of the laws, or to injure any citizen or his property for lawfully enforcing, or attempting to enforce the right of any person to the equal protection of the laws.

8.2 Plaintiff-Cramer (defendant in wrongful foreclosure action) engaged the services of three (3) separate attorneys, at different times, on this matter of wrongful foreclosure, the prior action and this action, as follows:

On/or about August, 1968 - Attorney Abel Selburn
On/or about April or May 1970 - Attorney Allen Counard
On February 26, 1979 - Attorney, William R. McFadden

8.3 Further, the referral service of the Detroit Bar Association, during the period of approximately two (2) years, from

about April 1972 to about sometime in 1974 kept Plaintiff-Cramer's name on file in seeking an attorney to handle this legal matter pending in the appellate courts of the State, and then said bar association wrote Plaintiff-Cramer a letter advising her that they could not locate an attorney for this matter.

8.4 That your Plaintiff realleges each and every paragraph of the foregoing Counts 1 through 8 as though each paragraph were in full restated verbatim herein.

8.5 That Plaintiff-Cramer, as mortgagor, was and is the victim in a wrongful foreclosure action, instigated and commenced in May 1968 because she had complained to the Mortgagee-Metropolitan Federal Savings and Loan Association and its officers that her "escrow" moneys for payment of taxes and insurance relating to the mortgaged real property were being mishandled when said mortgagee failed and neglected to pay taxes and insurance timely, failed and neglected to furnish receipts or copies of receipts for disbursements from "escrow" and that "excessive" amounts for "escrow" were wrongfully required, from time to time, among other things.

8.6 That Plaintiff-Cramer disputed the excessive "escrow" amounts and re-computed same, but she had never failed to pay "escrow" each and every month together with timely payments of principal and interest each and every month without fail.

8.7 That each of the attorneys she had hired on this matter, namely, Abel Selburn, Allen Counard and William R. McFadden became a deterrent and by design, with intent to defeat the due course of justice,

managed the case so that Plaintiff-Cramer would never have a day in court on said foreclosure matter.

8.8 That said attorneys, as conspirators to impede, hinder and obstruct Plaintiff's right to the equal protection of the laws, acted in their own interest and as adversaries to her cause, as more fully set forth herein.

8.9 That attorney William R. McFadden is currently withholding Cramer's papers, documents and files, and refusing to relinquish them while he also ultimately refused to prepare and complete pleadings for filing timely in the Federal court, in this matter, causing Cramer to prepare and file her own pleadings herein.

8.10 That co-defendant attorney Abel Selburn, in September 1968 and/or 1969, had sent copies of pleadings to Cramer and then, Cramer learned in February 1970 that attorney Abel Selburn had never filed any pleadings in the court in this matter, and thus, he abandoned the case in fraud of his client.

8.11 That co-defendant attorney Allen Counard either failed and neglected to investigate facts and law and/or deliberately litigated wrong issues, as his client's adversary, and in his own interest, and so that Cramer has never been heard and never allowed to be heard by any Court on wrongful foreclosure.

8.12 That the said co-defendants, attorneys Abel Selburn, Allen Counard and William R. McFadden conspired to deprive your Plaintiff due process of law with intent to deny the equal protection of the

law for the reason that they do not want mortgagors to have any rights to the equal protection of the laws.

8.13 That the said co-defendants, attorneys at law, herein, unlawfully engage in a continuing conspiracy and unlawful combination for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in the State of Michigan, and to deny Plaintiff (defendant in wrongful foreclosure action) the equal protection of the laws.

8.14 That the said co-defendants, attorneys, participated as conspirators in the violations herein alleged, and wrongfully performed acts or wrongfully omitted the performance of acts, and made statements in furtherance of participating as conspirators, in an unconstitutional manner, as obstructionists of justice, in "pari delicto" with client-Cramer's adversaries, the attorneys for the opposition, and so acting against their own client (Cramer) and for their own interests.

8.15 The overall purpose of the unlawful combination, as conspirators and obstructionists of justice, by said attorneys and lawyers named herein, is to deceive the client while the attorney is acting on his own behalf and in his own interest, contrary to the interests of the client while at the same time taking money for legal services with the intent and purpose of self-interest against the client's interest.

9. ACTUAL CONTROVERSY - FEDERAL ACTION INVOLVED

9.1 Your Plaintiff realleges each and every paragraph of the foregoing as though each paragraph were stated verbatim herein.

9.2 That the Federal Home Loan Bank Board, under 12 U.S.C.A. 1461, et seq., promulgates the federal regulations, among which are regulations 545.6-1 et seq., entitled Real Estate Loans, as applying to savings and loan associations.

9.3 That said regulations 545.6-1 et seq., set forth the provisions whereby "requirements" of one-twelfth prepaid or advance payments for taxes and assessments is met and collected by savings and loan associations as to mortgage loans.

9.4 That said provisions of regulations 545.6-1 are not applicable to insured or guaranteed loans.

9.5 That lending institutions, as to mortgage loans, such as Metropolitan Savings and Loan Association a/k/a Metropolitan Federal Savings and Loan Association collect "escrow" funds for the prepayment of taxes and insurance and other assessments whether or not the mortgage loan is insured or guaranteed, claiming that they are "bound by federal regulations" to require and maintain "escrow" accounts on mortgages granted.

9.6 That lending institutions, such as Metropolitan Savings and Loan Association a/k/a Metropolitan Federal Savings and Loan Association further claim there is no law or regulations that require said savings and loan associations to pay the taxes when due

with the "escrow" funds so collected.

9.7 That the said regulations promulgated by the Federal Home Loan Bank Board, under 12 U.S.C.A. 1461, et seq., make no provisions for said lending institutions to pay taxes on mortgaged property with the "escrow" funds so collected.

9.8 That the said lending institutions, while collecting said "escrow" funds on mortgages granted, invest and utilize said "escrow" funds in violation of 12 USCA 1464 (c), for self-dealing purposes, and by encouragement of the regulations and/or lack of regulations promulgated by the Federal Home Loan Bank Board.

9.9 That 12 U.S.C.A. 1464 (c) provides that "Such associations shall lend their funds only on the security of their savings accounts or on the security of first liens upon real property * * * . That any portion of the assets of such associations may be invested in obligations of, or fully guaranteed as to principal and interest * * * or accounts of any bank the deposits of which are insured * * * or in general obligations of any State or of any political subdivision thereof * * * .

9.10 That the loan contract on mortgages granted to savings and loan associations, with provisions as to borrowers being required to pay "escrow" funds for future payments of taxes and insurance, are absent of provisions as to enforcement of the mortgagee-lending institutions to pay taxes and insurance when due.

9.11 That the loan contract on mortgage allows the mortgagee-lending institution to

fail to pay taxes and insurance with the "escrow" funds so collected from mortgagors.

9.12 That the loan contract on mortgages granted and containing provisions as to "escrow" funds payable by mortgagors is, generally, in violation of 15 U.S.C.A. 1 et seq.

9.13 That the Federal Home Loan Bank Board, by its so-called regulations and/or lack of regulations encourages the widespread use of illegal contracts on mortgages, in violation of 15 U.S.C.A. 1, et seq.

9.14 That the Federal Home Loan Bank Board, in the absence of regulations for savings and loan associations as to collection of "escrow" funds, allows the mishandling of and self-dealing by savings and loan associations with the said "escrow" funds belonging to mortgagors.

9.15 That the Federal Home Loan Bank Board encourages the violation of the Fifth and Fourteenth Amendments to the United States Constitution whereby mortgagors being "required" to pay "escrow" funds to said Mortgagee-lending institutions are denied the equal protection of the laws and are deprived of property (escrow funds) without just compensation.

9.16 That savings and loan associations invest said mortgagors' "escrow" funds and realize a gross profit of earnings on said "escrow" funds without paying just compensation to the mortgagor as owner of said "escrow" funds.

9.17 That the Federal Home Loan Bank Board encourages the violations of the Fifth and Fourteenth Amendments to the United States Constitution, in favor of the

mortgagee-lending institution and against the mortgagor, by encouraging the collection of said "escrow" funds in denial of the equal protection of the law to the mortgagor as owner of said "escrow" funds.

9.18 That the Federal Home Loan Bank Board, by such encouragement, is thereby engaged in a conspiracy together with the saings and loan associations, by unlawful combination, in violation of 15 U.S.C.A. 1, et seq., and in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

9.19 That your Plaintiff (mortgagor-defendant in wrongful foreclosure) complained to Metropolitan Federal Savings and Loan Association about their failure to pay her taxes and insurance when due, and Plaintiff complained to said mortgagee about requiring "excessive" escrow moneys, all contrary to and in violation of the terms and conditions of the mortgage contract, and Plaintiff asked to pay her own liabilities for taxes and insurance rather than to pay "escrow" moneys for the defendants (Metropolitan) to mishandle.

9.20 That your plaintiff never failed to pay "escrow" funds to defendants (Metropolitan) in accordance with their requirements by the payment cards for monthly installments, which said payment cards were furnished to mortgagor-Virginia Cramer by said mortgagee-Metropolitan, prior to the foreclosure action.

9.21 That separate and apart from the said payment cards for monthly installments, the mortgagee-Metropolitan further required "excessive" escrow funds in addition to the monthly amounts included in the total shown on said payment-cards which included principal, interest and "escrow".

9.22 That Plaintiff (defendant in wrongful foreclosure) disputed and recomputed the "excessive" amounts required by mortgagee-defendants-Metropolitan.

9.23 That defendants (Metropolitan) foreclosed on the mortgage loan during the period of 15-day forbearance by the terms of the mortgage note whereby no late charges would be applicable, on "escrow" moneys only and accelerated the debt.

9.24 That the Sheriff's Sale Bidding Statement showed no "deficiency" in "escrow", and instead showed a credit balance in "escrow" which the defendants-Metropolitan applied in reduction of the principal balance.

9.25 That the Defendants-Metropolitan (Plaintiff in wrongful foreclosure by advertisement) claim that the basis of their foreclosure was because of federal regulations requiring them to require "escrow" on all home mortgages granted.

10. INJUNCTIVE RELIEF AGAINST MICHIGAN SUPREME COURT JUSTICES

10.1 Your Plaintiff (defendant in wrongful foreclosure) realleges each and every paragraph of the foregoing as though each paragraph were restated verbatim herein.

10.2 That the Michigan Supreme Court justices rendered their decision in Cramer v. Metropolitan Federal Savings and Loan et al, reported at 401 Mich 252 based on false facts.

10.3 That said false facts, mainly, are as follows:

"Plaintiff admits in her brief that she did not maintain a current escrow account. * * * Defendants complied in all respects with the requirements of the statute. * * * Plaintiff obtained a temporary restraining order, which was subsequently dissolved after the court determined that plaintiff was in default of her mortgage. * * * Plaintiff finally stopped the escrow payments, * * *. We next consider whether or not plaintiff's refusal to make timely escrow payments for taxes and insurance constituted a "default * * * in any condition of (the) mortgage," allowing foreclosure by advertisement pursuant to MCLA 600.3201; MSA 27A.3201. * * * We are convinced that under the terms of the contract before us, plaintiff has defaulted on a condition. By refusing to pay monies into escrow, plaintiff failed to perform a covenant the performance of which was a condition of the contract, * * * Here plaintiff refused to make the payments. * * *"

10.4 That your Plaintiff (defendant in wrongful foreclosure) consistently maintained that she was not in default of the terms and conditions of the mortgage covenant and the mortgage note, for the reason that she never failed to pay "escrow" and she did pay "escrow" to the mortgagee-Metropolitan each and every month without fail.

10.5 That each and every monthly installment payment made to mortgagee-Metropolitan included "escrow" and that Plaintiff further paid additional amounts in "escrow" separate and apart from the monthly installments.

10.6 That the Michigan Supreme Court members took judicial notice of the allegations of Defendants-Metropolitan and their attorneys where no proof, no evidence and no testimony was ever presented as to "plaintiff refused to make the payments."

10.7 That the allegations of the Defendants-Metropolitan and their attorneys (also co-defendants herein) were presented as a perpetration of fraud upon the Michigan Supreme Court where in the absence of litigating "she refused to pay escrow" in the trial court, the attorneys for defendants-Metropolitan utilized that theory of "she refused to pay escrow" as a diversion and to conceal their own misconduct of failing to pay taxes and insurance when due, and further requiring "excessive" escrow moneys to fatten the coffers of mortgagee-lending institution for self-dealing purposes.

10.8 That the allegations of "she refused to pay escrow" are false, and are a fraud perpetrated upon the court by the defendants-Metropolitan and their attorneys (named co-defendants herein) and whereby Metropolitan's records of Plaintiff's account and Plaintiff's cancelled checks endorsed by Metropolitan show that Plaintiff-Virginia Cramer, as mortgagor, never failed to pay "escrow" prior to the foreclosure and "Notice of Mortgage Sale."

10.9 That, in fact, Plaintiff (defendant in wrongful foreclosure) did pay "escrow" each and every month without fail and refused to pay "escrow" after the commencement of the foreclosure and after the "Notice of Mortgage Sale" was published.

10.10 That your Plaintiff (defendant in

wrongful foreclosure) has been systematically, continuously and consistently denied due process of law and denied the right or opportunity to be heard.

10.10 (a) That the Michigan Supreme Court members took judicial notice and wrote their decision based on said judicial notice of mere allegations contained in the brief on appeal submitted by Defendants-Metropolitan and their attorneys, and which said allegations are, in the main part, false; and which said false allegations were not litigated in the lower courts prior to the decision of the Michigan Supreme Court rendered and reported at 401 Mich 252.

10.11 That the Michigan Supreme Court members have allowed a fraud to be perpetrated upon the court and also, in refusing to correct their defective decision reported at 401 Mich 252 said Michigan Supreme Court members are condoning fraud.

10.12 That the Michigan Supreme Court members have no authority or power, in any event, to condone fraud.

10.13 That the Michigan Supreme Court members knew and had knowledge of the contents and provisions of the mortgage contract herein involved, and knew and had knowledge that said contract prohibits and inhibits a mortgagor from paying taxes and insurance while being "required" to pay "escrow" moneys to the mortgagee.

10.14 That the Michigan Supreme Court members have knowledge and did have knowledge that said mortgage contract is designed with the intent of denying the mortgagor the equal protection of the laws

and in violation of the Fourteenth Amendment to the United States Constitution.

10.15 That the Michigan Supreme Court members have knowledge and did have knowledge that a contract cannot be disclaimed in part and enforced in part.

10.16 That the Michigan Supreme Court members have knowledge and did have knowledge that the entire contract must be considered to arrive at a proper interpretation of the intent of the contract, and that said Michigan Supreme Court members considered only a partial of two (2) paragraphs of said contract, whereas the said contract actually is comprised of nine (9) paragraphs in addition to the terms of the mortgage note.

10.17 That the Michigan Supreme Court members have a duty to declare an illegal-contract as being illegal, without being asked to do so.

10.18 That the Michigan Supreme Court members knew of and did have knowledge of that your plaintiff (defendant in wrongful foreclosure action) had an exemplary payment record and 'was well ahead of her repayment schedule" and that the Mortgagee-defendants control the allocation of principal, interest and "escrow" upon receipts of payments from the mortgagor.

10.19 That by relying on only the brief submitted by the Attorneys for the defendants-Metropolitan, and by ignoring certain contents of Plaintiff's brief, as submitted to the Michigan Supreme Court, in prior action No. 115-792 and No. 57215 and reported at 401 Mich 252, the Michigan Supreme Court members acted as a voluntary advocate

of the misconduct of the defendants-Metropolitan by their failure to pay taxes and insurance when due after receiving the "escrow" moneys paid by the mortgagor.

10.20 That the Michigan Supreme Court members have shown in their decision reported at 401 Mich 252 that they have absolutely no regard for the security of the State of Michigan and the various and several counties and cities therein.

10.21 That the decision reported at 401 Mich 252, as rendered by the Michigan Supreme Court justices, borders on insanity of said members of said court.

10.22 That where it appears that the Michigan Supreme Court members are mentally disabled to render decisions, they should and must be enjoined and restrained from so doing where the security of the State of Michigan may be so jeopardized.

10.23 That your Plaintiff (defendant in wrongful foreclosure action) sought relief in the United States Supreme Court, by way of Petition for Writ of Certiorari to the Michigan Supreme Court, and which said petition for writ was denied on June 12, 1978, for the reason that Plaintiff-petitioner alleged fraud.

11. MEASURE OF DAMAGES

11.1 Your federal petitioner claims actual damages in excess of $25,000.00 as to the foreclosure action. Further, your federal petitioner claims impairment of earning capacity, loss of time, special, general, exemplary and punitive damages

against the Defendants and Co-Defendants, jointly, individually and severally, in the amount of $100,000.00.

11.2 Demand is hereby made for trial by jury in this case.

12. PRAYER FOR RELIEF AND DEMAND FOR TRIAL BY JURY

WHEREFORE, your Federal plaintiff demands:

12.1 That the Defendants and Co-Defendants be required to answer.

12.2 That the Michigan Supreme Court decision reported at 401 Mich 252 be reversed, voided or corrected.

12.3 That Preliminary, Permanent and Eternal injunctive Order be issued against the Michigan Supreme Court members as set forth in the foregoing, and by motion filed.

12.4 That the entire case be removed from the State courts, and that bond requirements on removal of state case be waived, and by motion filed.

12.5 That a three-judge panel be assigned for issuance of Declaratory judgment guaranteeing constitutional rights to mortgagors to pay their own liabilities for taxes and insurance, etc. as to real property mortgaged.

12.5 (a) Jury trial for the recovery of damages so wrongfully sustained.

12.6 Judgment in the amount of $25,000.00; or alternatively, Judgment in the amount of $100,000.00 by jury trial, awarded to Plain-

tiff (defendant in wrongful foreclosure).

12.7 Such other relief as may be consistent with equity and good conscience.

Dated:
July 11, 1979 /s/ Virginia Cramer
Plaintiff

STATE OF MICHIGAN)
) SS.
COUNTY OF WAYNE)

VERIFICATION

On this 13th day of July, 1979, before me, a Notary Public, personally appeared the above-named Virginia Cramer, who made oath that she has read the foregoing PETITION FOR REMOVAL OF MICHIGAN STATE CASE, COMPLAINT, by her subscribed, knows the contents thereof and that the same is true of her own knowledge, except as to those matters stated to be upon information and belief, and as to those matters she believes them to be true.

/s/ Virginia Cramer
27314 Clairview
Dearborn Hts., Mich.
Telephone: 278-7286

Subscribed and sworn to before me
this 13th day of July, 1979.
/s/ DAVID R. CARROLL
Notary Public, Wayne County, Michigan
My Commission expires: October 18, 1982

Filed August 10, 1979 - No. 9-72789

MOTION FOR DISMISSAL BY DEFENDANT MEMBERS OF THE MICHIGAN SUPREME COURT, AND NOTICE OF MOTION (may be submitted without oral argument)

PLEASE TAKE NOTICE that defendant Members of the Michigan Supreme Court will move this Court, HONORABLE ROBERT E. DEMASCIO, UNITED STATES DISTRICT JUDGE, presiding, at the time and date set by Judge DeMascio, or as soon thereafter as counsel can be heard, at Judge DeMascio's courtroom, second floor Federal Building, Detroit, Michigan, unless under ED Mich Rule IX(j) the judge orders submission and determination without oral argument, to dismiss with prejudice that portion of the action pertaining to the members of the Michigan Supreme Court:

1. Because of the inclusion of scandalous matter (FRCP 11 and 12 (f).

2. Because this Court does not have jurisdiction over the members of the Michigan Supreme Court. Plaintiff is seeking to have this Court exercise appellate jurisdiction over the Michigan Supreme Court (FRCP 12(b)(1) & 12(h) (3).

3. Because plaintiff has failed to state a claim upon which relief can be granted, the members of the Michigan Supreme Court being immune from liability while acting within their judicial jurisdiction, (FRCP 12 (b)(6).

4. Because plaintiff has failed to state a claim upon which relief can be granted,

plaintiff is collaterally estopped from asserting matters that have been raised and decided in the action in the Michigan courts for which certiorari has been denied by the United States Supreme Court. (FRCP 12(b) (6).

No concurrence has been sought under ED Mich Rule IX(a) because plaintiff is appearing without counsel.

FRANK J. KELLEY (P15818)
Attorney General
GEORGE H. WELLER (P26249)
Assistant Attorney General
Counsel for members of the
Michigan Supreme Court
Office address:
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Lansing, Michigan 48913
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Dated:
August 9, 1979

Filed August 10, 1979 - No. 9-72789

MEMORANDUM OF LAW ON BEHALF OF THE JUSTICES OF THE MICHIGAN SUPREME COURT IN SUPPORT OF THEIR MOTION TO DISMISS THE ACTION AGAINST THEM WITH PREJUDICE

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CONCLUSION

The action should be dismissed with prejudice.

EXHIBIT: A. Extracts from Ms. Cramer's Petition for Writ of Certiorari.

A.2-A.4	Questions presented to U.S. Supreme Court.
A.5-A.8	Application to Michigan Supreme Court to Appeal from Decisions of Michigan Court of Appeals.
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(The above EXHIBITS are omitted here for the reason that they are on record in the U. S. Supreme Court, Docket No. 77-1558, Filed on April 27, 1978)

FACTS

The seven compassionate and skilled lawyers who constitute the Michigan Supreme Court have been labelled in Ms. Cramer's complaint as "mentally disabled to render decisions". (compl para 10.22 and 10.23. See, Motion for Injunctive Relief #7).

In Ms. Cramer's complaint she states that the decision of the Michigan Supreme Court in Cramer v Metropolitan Savings and Loan Assn, 401 Mich 252, 258 NW2d 20, cert denied 436 US 958, 98 SCt 3072, 57 LEd2d 1123 (1978) "borders on insanity of said members of said court". (compl 10.21).

Ms. Cramer alleges that by their 1977 decision the Michigan Supreme Court members "have absolutely no regard for the security of the State of Michigan and the various counties and cities therein." (compl 10.20. See, Motion for Injunctive Relief #7)

Ms. Cramer alleges that the Michigan Supreme Court in Cramer "acted as a voluntary advocate of the misconduct" of her opponents. (compl 10.19).

Ms. Cramer alleges that the Michigan Supreme Court condones fraud. (compl 10.11, 10.12. See, Motion for Injunctive Relief #8).

In addition to money damages, Ms. Cramer seeks to have this federal District Court act against the justices of the Michigan Supreme Court:

"prohibiting, preventing, precluding, inhibiting, and restraining and enjoining the rendering of decisions and/or opinions due to mental disability of said persons."
(Motion for Injunctive Relief, "WHEREFORE" clause.)

The basis for these scandalous statements is a controversy between plaintiff Cramer and Metropolitan Savings and Loan Association over the payment by Ms. Cramer into an "escrow" account for real property, ultimately resulting in foreclosure by Metropolitan Savings, and redemption on June 5, 1969 by Ms. Cramer after a sheriff's sale.

This is the history of the litigation. Most of the history was obtained from Ms. Cramer's petition for certiorari to the United States Supreme Court.

___ __ 1968 Metropolitan commences foreclosure proceedings by advertisement.

Aug 12, 1968 Ms. Cramer commences action in Wayne County Circuit Court, #115,792.

Aug 12, 1968 Circuit Judge Murphy enters a TRO and a Show Cause.

Aug 23, 1968 Ms. Cramer files first amended complaint.

Sep 6, 1968 Show Cause hearing.

Sep 27, 1968 TRO dissolved by Circuit Judge Murphy. Court determines Ms. Cramer in default on her mortgage. Court permits Metropolitan to proceed with foreclosure.

Oct 1, 1968 Sheriff sells property to Metropolitan.

June 5,1969 Ms. Cramer redeems property.

Mar 16, 1970 Ms. Cramer seeks to file second amended complaint and to demand jury trial.

Mar 30, 1970 Circuit Judge Bell denies Mrs. Cramer's request to file a second amended complaint.

May 29, 1970 Circuit Judge Bell grants Metropolitan's Motion for Summary Judgment against Ms. Cramer.

Jul 22, 1971 Michigan Court of Appeals reverses and remands with order to permit Ms. Cramer to file second amended complaint. 34 Mich App 638, 192 NW2d 50.

Jul 23, 1971 Ms. Cramer files second amended Complaint.

Mar 27, 1972 On cross motions for summary judgment, acting Circuit Judge Hammer denies Ms. Cramer's motion and grants Metropolitan's motion. Ms. Cramer's complaint dismissed with prejudice.

May 29, 1973 Michigan Court of Appeals in unreported opinion affirms Summary judgment but for Count alleging mishandling of funds in escrow and breach of fiduciary duty in failing to pay Ms. Cramer's taxes on time. This count reversed and remanded for trial on the merits. (Docket No. 14149).

Sep 21, 1973 After trial by jury, Circuit Judge Kirwan adjudges no cause of action after jury finds in favor of Metropolitan.

Jun 2, 1975 Michigan Court of Appeals affirms in unreported opinion. (Docket No 18948)

Oct 6, 1977 Michigan Supreme Court affirms. 401 Mich 252, 258 NW2d 20.

Dec 15, 1977 Michigan Supreme Court denies Ms. Cramer's motion to expand record to include exhibits pertaining to the application for rehearing and denies rehearing. 402 Mich 954 (case 2)

Feb 1, 1978 Michigan Supreme Court denies rehearing. 402 Mich 959 (case 1)

June 12, 1978 United States Supreme Court denies certiorari. 436 US 958, 98 SCt 3072, 57 LEd2d 1123.

(The following action does not include the members of the Michigan Supreme Court as a defendant, but there seems to be some confusion on this in plaintiff's mind because she has intermingled papers pertaining to the following with papers in the Federal District Court action in which the Michigan Supreme Court is named as a defendant.

Jul 14, 1978 Ms. Cramer institutes 8 count action in Michigan Circuit Court against Metropolitan and various lawyers (Wayne County Circuit Court #78-822879-CZ).

Aug 10, 1978 Ms. Cramer enters default against defendant-lawyer Counard.

Sep 7, 1978 Circuit Judge Gribbs sets aside default against lawyer-defendant Counard.

Sep 8, 1978 Circuit Judge Farmer grants accelerated judgment with prejudice on Counts I - VI on the basis of res judicata and grants summary judgment with prejudice on count VIII (that alleged malpractice) on the basis that the lawyer defendants named in count VIII never represented plaintiff.

Oct 13, 1978 Michigan Court of Appeals on own motion dismisses Ms. Cramer's claim of appeal for the reason the order appealed from is not a final judgment within the meaning of GCR 518.2. (Action certified by Clerk of Michigan Court of Appeals on Oct 17, 1978). Docket #78-3794).

Oct 24, 1978 Circuit Judge Kirwan denies lawyer-defendant Counard's motion for accelerated and/or summary judgment because of pending motion by Ms. Cramer in Court of Appeals.

Feb 7, 1979 Michigan Supreme Court denies Ms. Cramer's request for leave to appeal from Oct 13, 1978 action of Michigan Court of Appeals. (#62249)

May 3, 1979 Reconsideration denied by Michigan Supreme Court.

Jul 10, 1979 Ms. Cramer "removes" her own case to Federal District Court.)

Jul 19, 1979 Papers in this-Federal District Court action 9-72789 served on Michigan Supreme Court members.

Aug 9, 1979 Michigan Supreme Court members move to dismiss the action against them.

ARGUMENT

1. THE MOTION FOR AN INJUNCTION AND THE PORTION OF THE COMPLAINT CONCERNING THE MEMBERS OF THE MICHIGAN SUPREME COURT IS SO SCANDALOUS THAT THE ACTION AGAINST THE JUSTICES SHOULD BE DISMISSED WITH PREJUDICE.

Ms. Cramer, no stranger to the courts, brings this action per per. She comes within the provision of FRCP 11 that provides for appropriate disciplinary action being taken if scandalous matter is inserted into a pleading, and within FRCP 12(f) that provides for striking scandalous matter from a pleading.

"Scandalous Matters" are those casting an excessively adverse light on the character of an individual or party.

O.K.C. Corp v Williams, 461 FSupp 540, 550 (ND Tex 1978).

Ms. Cramer's language in the complaint concerning the justices being "mentally disabled", referring to their decision in her case as one that "borders on insanity", stating they have

"no regard of the security of the state", labelling the Court as "a voluntary advocate of the misconduct" of her opponents, and stating that the justices condone fraud, is shockingly scandalous.

The language in the motion for injunctive relief and the relief sought is even more scandalous than the language in the complaint, being premised on the "mental disability" of the seven justices, their condoning of "fraud", their "jeopardizing the security", the premise that they act "without proof" and "without evidence" on "false facts" in violation of the federal Constitution; and requesting injunctive relief "restraining and enjoining the rendering of decisions and/or opinions due to mental disability of said persons.".

These words are more than scandalous - the words are closer to the language of a case in the middle district of Pennsylvania:

> "so absurd and preposterous that they constitute an affront to the dignity of the court and represents a gross abuse of the privilege to bring a suit in a court of law."
> Hohensee v Watson, 188 FSupp 941 (MDPa 1959), Aff'd, 283 F2d 950 (3rd Cir 1960) (per curiam).

Although pro se complaints are to be liberally construed,

> Puckett v Cox, 456 F2d 233 (6th Cir 1972 (case 2) (per curiam),

liberality is not an invitation to license. Language such as that used by Ms. Cramer in her complaint and petition for an injunction has been consistently held by the courts to

be sufficient reason

to dismiss the complaint
Bertucelli v Carreras,
467 F2d 214 (9th Cir 1972) (per Curiam);

Skolnick v Hallett,
250 F2d 861 (7th Cir 1965) Per curiam),
cert denied, 382 US 996, 86 SCt 580,
15 LEd2d 482 (1966);

Payne v Howard,
75 FRD 465 (DDC 1977); and

Martin v Hunt,
28 FRD 35 (D Mass 1961).

See,
Shakespeare v Wilson,
40 FRD 500 (SD Calif 1966);

to dismiss the complaint with prejudice,
Brown v Califano,
75 FRD 497 (DDC 1977);

or even to dismiss the complaint and to enjoin the complaintant from filing another similar legal action,

ex parte Tyler,
70 FRD 456 (ED Mo 1976).

This federal District Court should not tolerate an affront to one of the nation's most prestigious state courts by a disgruntled adversary whose only basis for proceeding is the fact that she lost an appeal - a loss that the United States Supreme Court found no cause to review.

THE ENTIRE ACTION SHOULD BE DISMISSED WITH PREJUDICE!

2. THIS FEDERAL DISTRICT COURT DOES NOT HAVE JURISDICTION.

Ms. Cramer seeks to have this Federal District Court reverse, void, or correct the decision of the Michigan Supreme Court that is published at 401 Mich 252 (compl 12.2).

Ms. Cramer is in fact seeking appellate review.

Appellate review of this decision of the Michigan Supreme Court is by the United States Supreme Court. U.S. Const Art III, Sec 2, cl. 1; 28 USC 1257 (3).

Ms. Cramer sough appellate review via a 145 page petition for certiorari and appendices of almost the same length. Certiorari was denied. 436 US 958, 98 SCt 3072, 57 LEd2d 1123 (1978). This ends the matter.

See, Huffman v Pursue, 420 US 592, 605, 95 SCt 1200, 1209, 43 LEd2d 482, 493 (1975)

Atlantic Coast Line RR Co v Brotherhood of Locomotive Engineers, 398 US 281, 287, 90 SCt 1739, 1743, 26 LEd2d 234, 241 (1970); and

Lamb Enterprises v Kiroff, 549 F2d 1052, 1063 (6th Cir 1977), cert denied, 431 US 968, 97 SCt 2916, 53 LEd2d 1064 (1977).

See, also, England v Louisiana State Board of Medical Examiners, 375 US 411, 419, 84 SCt 461, 466, 11 LEd2d 440, 447 (1964)

This Federal District Court does not have appellate jurisdiction over the Michigan Supreme Court and is without jurisdiction to consider Ms. Cramer's action.

> Sexton v Barry, 233 F2d 220 (6th Cir 1956), cert denied, 352 US 870, 77 SCt 94, 1 LEd2d 76 (1956).

3. THE JUSTICES OF THE MICHIGAN SUPREME COURT ARE IMMUNE FROM LIABILITY.

Ms. Cramer's allegations relate to the actions of the justices of the Michigan Supreme Court in connection with them acting on her appeal and handing down the opinion that appears in 401 Mich 252, 258 NW2d 20 (1977).

As the actions complained of are those of the Justices acting within their judicial jurisdiction, they are absolutely immune from liability.

A. JUDICIAL IMMUNITY - THE STANDARD.

(1). THE JUDICIAL IMMUNITY DOCTRINE.

As first enunciated in Randall v Brigham, 74 US 523, 19 LEd 285 (1869), and expanded by Bradley v Fisher, 80 US 335, 20 LEd 646 (1872),

> ". . . it is general principle, applicable to all judicial officers, that they are not liable to a civil action for any judicial act done within their jurisdiction.:, 74 US at 535, 19 LEd at 191, ". . . even when such acts . . . are alleged to have been done maliciously and corruptly.", 80 US at 351, 20 LEd at 651.

> ". . . the judges are only responsible to the people, or the authorities constituted by the people, for the manner in which they discharge the great trust of their office. If in the exercise of the powers with which they are clothed as ministers of justice, they act with partiality, or maliciously or corruptly, or arbitrarily, or oppressively, they may be called to an account and suspended or removed from office." 80 US at 350, 20 LEd at 650.

When the question arose whether Sec. 1 of the Civil Rights Act of 1871, 42 USC 1983, modified this immunity for state judges, the US Supreme Court in Pierson v Ray, 386 US 547, 87 SCt 1213, 18 LEd2d 288 (1967), reaffirmed the principle of judicial immunity by saying:

> "Few doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction, as this court recognized when it adopted the doctrine in Bradley v Fisher. . . . This immunity applies even when the judge is accused of acting maliciously and corruptly . . ." 386 US at 553-554, 87 SCt at 1218, 18 LEd2d at 294.

The US Supreme Court went on to say:

> ". . . it is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions

with independence and without fear of consequences."
386 US at 554, 87 SCt at 1218, 18 LEd2d at 294.

"We do not believe that this settled principle of law was abolished by Sec. 1983 . . ." 386 US at 554, 87 SCt at 1218, 18 LEd2d at 295.

See, e.g., Butz v Economou, 438 US 478, 508-509, 98 SCt 2894, 2912, 57 LEd2d 895, 917-918 (1978);

Imbler v Pachtman, 424 US 409, 418 n.12 423 n.20, 96 SCt 984, 989 n.12, 991 n.20, 47 LEd2d 128, 136 n.12, 139 n.20 (1976)

Kurz v Michigan, 548 F2d 172, (6th Cir 1977)

Littleton v Fisher, 530 F2d 691, 693 (6th Cir 1976) (per curiam);

Rosenberg: Stump v Sparkman: The Doctrine of Judicial Immunity, 64 Va L Rev 833 (1978);

Barth: Immunity of Federal and State Judges from Civil Suit - Time for a QUALIFIED Immunity? 27 Case Western Reserve L Rev 727 (1977);

McCormack and Kirkpatrick, Immunities of State Officials Under Section 1983, 8 Rutgers-Camden L J 65 (1976);

26 South Carolina L Rev 633 (1975);

Judge, Schirott, and Bliss, Judicial Immunity Under the Civil Rights Act: Here Come the Judge's Defenses, 7 John Marshall J 213 (1974);

Kates, Immunity of State Judges Under the Federal Civil Rights Acts: Pierson v Ray Reconsidered, 65 NW U L Rev 615 (1971); and

Annot, 173 ALR 802 (1948, 55 ALR 282 (1928), & 13 ALR 1344 (1921)

(2) THE MEANING OF "JURISDICTION" IN THE JUDICIAL IMMUNITY DOCTRINE.

"Jurisdiction" means the judicial power to hear and determine a matter; not the manner, method, or correctness of the exercise of that power.

McGlasker v Colton, 397 FSupp 525, 530 (MD Alabama 1975);

O Regan v Schermerhorn, 25 NJ Misc 1, 50 A2d 10 (1946); and

46 Am Jur2d 145 (Judges, Sec 75, (1969)

"Jurisdiction" is defined as "the authority of law to act officially in the matter then in hand."

McGlasker v Colton, 397 FSupp 525, 530 (MS Alabama 1975);

Jones v Brown, 54 Iowa 75, 6 NW 140 (1880); and

46 Am Jur2d 145 (Judges, Sec 75, (1969)

In the seminal case of Bradley v Fisher, 80 US 335, 20 LEd 646 (1872), the US Supreme Court did not define what is meant by "jurisdiction" when it stated that judges are not liable for damages for any judicial act done

within their jurisdiction, but the meaning of the word can be gleaned from the examples given in the opinion.

> "Thus, if a probate court, invested only with authority over wills and the settlement of estates of deceased persons, should proceed to try parties for public offenses being entirely wanting in the court, and this being necessarily known to its judge, his commission would afford no protection to him in the exercise of the usurped authority." 80 US at 352, 20 LEd at 651.

In this quote from Bradley, the key to understanding "jurisdiction" is the wording,

> "Jurisdiction over the subject of offenses being entirely wanting in the court" (emphasis added).

This is underscored by the example that immediately follows the text of Bradley in which the US Supreme Court says that a judge of a criminal court is acting within his judicial jurisdiction even if he has a person arrested and tried for an act that is not a crime and then sentences the person to a greater punishment than is authorized by law.

As the Supreme Court stated in Stump v Sparkman, 435 US 439, 356, 362, 98 SCt 1099, 1105, 1107, 55 LEd2d 331, 339, 342 (1978).

> "(T)he scope of the judge's jurisdiction must be construed broadly where the issue is the immunity of the judge."

> "(W)hether an act by a judge is a 'judicial' one relate(s) to the nature of the act itself, i.e., whether it is a function normally performed by a judge, and to the expectations of the parties, i.e. whether they dealt with the judge in his judicial capacity."

A judge is absolutely immune from liability for his or her judicial acts, even if his or her exercise of authority is flawed by the commission of grave procedural errors.

> Stump v Sparkman, 435 US 349, 360, 98 SCt 1099, 1107, 55 LEd2d 331, 341 (1978).

If an act performed by a judge is the type of act normally performed only by judges, and the judge acts in his capacity as a judge, the informality with which a judge proceeds does not render his or her action nonjudicial and deprive him or her of his or her absolute immunity.

> Stump v Sparkman, 435 US 349, 360, 98 SCt 1099, 1107, 55 LEd2d 331, 341 (1978)

And, as the Supreme Court also said in Stump v Sparkman:

> "Disagreement with the action taken by the judge, however, does not justify depriving that judge of his immunity. Despite the unfairness to the litigants that sometimes results, the doctrine of judicial immunity is thought to be in the best interests of 'the proper administration of justice . . . (, for it allows) a judicial officer, in exercising the authority vested in him (to) be

free to act upon his own convictions, without apprehension of personal consequences to himself.' Bradley v Fisher, 13 Wall., (80 US) at 347. The fact that the issue before the judge is a controversial one is all the more reason that he should be able to act without fear of suit." 435 US at 363, 98 SCt at 1108, 55 LEd2d at 343.

Published cases in which a judge was found to be acting in a clear absence of all jurisdiction are few, but the following give some meaning to "jurisdiction".

Stump v Sparkman gives the following two examples of federal circuit courts holding that a judge was acting wholly without jurisdiction, 435 US at 361 n.10, 98 SCt at 1107 n.10, 55 LEd2d at 342 n.10.

A justice of the peace forcibly removing a man from his courtroom and physically assaulting him.
Gregory v Thompson, 500 F2d 59 (9th Cir 1974)

A county judge serving on a board that has only legislative and administrative powers.
Lynch v Johnson, 420 F2d 818 (6th Cir 1970)

(See, Santiago v City of Philadelphia, 435 FSupp 136 (ED Pa 1977). Duties of Family Court judges in connection with operation of a Youth Study Center are administrative or ministerial in nature and therefore not included within the immunity umbrella.)

In Ex Parte Virginia, 100 US 335, 25 LEd 676, 680 (1880), a habeas corpus proceeding, a Virginia county court judge was said to be acting outside of his authority and in direct violation of the spirit of a state statute when he excluded colored persons from his jury lists merely because those persons were colored. The U.S. Supreme Court said that the act of selecting the jury lists was a mere ministerial act that could have been performed by a private person or someone such as the sheriff, and was not a judicial act at all.

The Sixth Circuit in Manning v Ketcham, 58 F2d 948 (6th Cir 1933), held in an action for false imprisonment, that a Circuit Judge in Kentucky was acting in a clear absence of jurisdiction when he called a person to the witness chair 39 times, repeatedly questioned him concerning an organization of which the witness was a member, ordered a jury to convict him without evidence, and sentenced him to a fine and a jail term. The Sixth Circuit said as to jurisdiction and judicial immunity:

> "When a judge acts in the clear absence of all jurisdiction, i.e., of authority to act officially over the subject-matter in hand, the proceeding is coram non judice. In such a case the judge has lost his judicial function, has become a mere private person, and is liable as a trespasser for the damages resulting from his unauthorized acts. Such has been the law from the days of the case of the Marshalsea, 10 Coke 68. It was recognized as such in Bradley v Fisher, 13 Wall. (80 U.S.) 335, 351, 20 LEd 646." 58 F2d at 949.

In Spires v Bottorff, 317 F2d 273 (7th Cir 1963), cert denied, 379 US 938, 85 SCt

343, 13 LEd2d 349 (1964),, an Indiana Circuit Court judge was held by a federal court in a civil rights action to be acting outside of the Circuit Court judge's jurisdiction when after disqualifying himself from a coram nobis proceeding to set aside a previous conviction, the judge used his position as a judge to induce a warden to prevent the petitioner from corresponding with the court clerk, obtruded himself into the proceedings, interfered with the trial judge, filed a known to be false affidavit, and intimidated and discredited the public defender.

In Harris v Harvey, 436 FSupp 143 (ED Wis 1977), a federal civil rights case against a white Wisconsin County Court judge, the U.S. District Court held that allegations of the judge informing newspaper reporters of what transpired at a secret investigation concerning the black plaintiff, and holding a press conference to reveal charges and to inform the press that plaintiff had refused to testify at the investigation, were allegations of the judge acting wholly outside of his jurisdiction.

In Wade v Bethesda Hospital, 337 FSupp 671, 674 (SD Ohio 1971) a sterilization case involving a civil suit for damages, the US District Court rejected a state probate judge's argument that he was immune because he had a general power in equity to order the sterilization of a "feeble minded" woman upon petition of a county Child Welfare Board. The US District Court judge found that there being "no set of circumstances or conditions under Ohio law which would permit defendant . . . (judge) to Order plaintiff to submit to sterilization", the state probate judge acted wholly without jurisdiction.

> (In Stump v Sparkman a sterilization case involving a judge of an Indiana Court of general jurisdiction, the Supreme Court held that "(t)he Indiana law vested in judge Stump the power to entertain and act upon a petition for sterilization. He is, therefore, under the controlling cases, immune from damages liability even if his approval of the petition was in error."
> 435 US at 364, 98 SCt at 1108-1109, 55 LEd2d at 344.)

In another civil rights action, a federal district court in Yates v Village of Hoffman, 209 FSupp 757 (ND Ill 1962), held that a magistrate in Illinois was acting without jurisdiction when the magistrate directed a police officer to take into custody an individual who was not named in an arrest warrant.

The Supreme Court in Stump v Sparkman, 435 US 349, 361, 98 SCt 1099, 1107, 55 LEd 2d 331, 342 (1978), gave the following as an example of a federal circuit court finding a judge's acts within his jurisdiction.

> The parents of a boy who was to be tried on a criminal charge came to the Texas courthouse to bring their son a fresh suit of clothes. They went to the state district judge's office to find out when the trial would start. The judge lost his temper and ordered the old couple out of his office. Due to a hearing problem, confusion, and fright the couple did not move fast enough, so the judge called a deputy sheriff to jail the father for the rest of the day. Several months later the judge issued an order holding the father in contempt nunc pro tunc. The Fifth Circuit held

> that the judge was acting within his jurisdiction because the use of contempt power is a normal judicial function; the events involved occurred in the judge's chambers; the controversy centered around a case then pending before the judge; and the confrontation arose directly and immediately out of a visit to the judge in his official capacity.
> McAlester v Brown, 469 F2d 1280 (5th Cir 1972).

Some recent cases in which a judge has been found to be acting within his or her jurisdiction, and therefore to be immune from suit are:

SLavin v Curry, 574 F2d 1256 (5th Cir 1978), (Judge cancelling a criminal - bond so the police could move witnesses out of town where the complainant could not find them, and selecting a court reporter who later altered a transcript at the direction of the judge);

Mee v Becker, 456 FSupp 224 (WD Mo 1978). (Failure of US District Judge to place lawyer on a list to receive criminal appointments);

Baer v Baer, 450 FSupp 481 (ND Cal 1978) (Superior Cout judge issuing an ex parte conservatorship order in a "legal deprogramming" case);

Chalk v Elliott, 449 FSupp 65 (ND Tex 1978) (County judge denying a petition for a liquor license);

Orlander v Wizel, 443 FSupp 744 WD Ark 1978), (Chancellor and Probate Judge receiving a petition for temporary guardianship in lieu of the Clerk of the Court, and acting on the petition);

Fox v Castle, 441 FSupp 411 (ND Pa 1977), (Justice of the Peace setting bail and making probable cause determination at a preliminary hearing);

Peacock v National Bank and Trust Co of Columbus, 241 Ga 280, 244 SE2d 816 (1978), (Superior Court judge sustaining nonresident defendant's motions to dismiss for lack of jurisdiction);

Higgins v Redding, 34 Or App 1029, 580 P2d 580 (1978), (Issuing erroneous bench warrant for the arrest of a probationer);

J.A. Meyers & Co v Los Angeles County Probation Dept, 78 Cal App 3d 309, 144 Cal Rptr 186 (1978), (Placing a person on probation);

Scott v City of Niagra Falls, 407 NYS2d 103 (Superior Ct Niagra Cty 1978), (County Judge assigning request for writ of error coram nobis to the public defender's office).

(3) JUDICIAL IMMUNITY CLOAKS THE ACTIONS OF A JUDGE WHO ACTS IN EXCESS OF JURISDICTION.

Although, as has been shown when a judge acts entirely without jurisdiction she or he is not protected by the judicial immunity doctrine, a judge is protected by the

judicia immunity doctrine, a judge is protected by the judicial immunity doctrine when he or his actions are in excess of jurisdiction, but not without jurisdiction.

As was said in Bradley v Fisher, 80 US 335, 351, 20 LEd 646, 651 (1972):

> "(J)udges of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and - are alleged to have been done maliciously or corruptly."

"Excess of Jurisdiction" has been defined as follows:

> "'Excess of jurisdiction,' as distinguished from the entire absence of jurisdiction, means that the act, although within the general power of the judge, is not authorized, and therefore void, with respect to the particular case because the conditions which alone authorize the exercise of his general power in that particular case are wanting, and hence the judicial power is not in fact lawfully involved."

Poque v Swink, 365 Mo 503, 284 SE2d 868 (1955) (per curiam),

See, State v Bushong, 93 Ohio App 201, 210-211, 112 NE2d 675, 681 (1952), aff'd 159 Ohio St 259, 111 NE2d 918 (1953)

State v Bushong, 92 Ohio App 101, 109 NE2d 692 (1945); and

21 CJS 37 (Courts, at 25, 1940).

See, also,
Stafford: An Overview of Judicial Immunity, 1 State Ct J 3, 34 (Summer 1977).

Some examples of judicial acts that courts have found to be in excess of jurisdiction, but that were nevertheless within the judge's jurisdiction and therefore protected by the judicial immunity doctrine, are:

A judge in Arizona signing a temporary guardianship order before the subject, then in Arkansas, was within Arizona jurisdiction, so a father could "deprogram" his son.
Rankin v Howard, 457 FSupp 70 (D Ariz 1978)

A city magistrate in Arizona wrongfully jailing a person convicted of a traffic offense.
Evans v Copins, 26 Ariz App 96, 546 P2d 365 (1976)

A Michigan Municipal Court judge improperly committing a person as mentally ill. Olepa v Mapletoff, 2 Mich App 734, 141 NW2d 350 (1966)

A Missouri Circuit Court judge holding several county judges in contempt for failure to comply with the circuit judge's order to increase the salary of a deputy clerk. Poque v Swink, 365 Mo 503, 284 SW2d 868 (1955) (per curiam)

A Chicago Municipal Court judge improperly approving of sureties on bail bonds through negligent and misplaced

confidence in a certain bondsman.
In re McGarry, 380 Ill 359, 44 NE2d 7 (1942).

An Alabama Justice of the Peace issuing an arrest warrant on the basis of an affidavit insufficient to charge any criminal offense.
Broom v Douglass, 175 Ala 268, 57 So 860 (1912)

A Municipal Court judge in Maine issuing arrest warrants based on a void city ordinance.
Rush v Buckley, 100 Me 322, 61 A 774 (1905).

The judges of the Michigan Supreme Court were obviously acting within their judicial jurisdiction when acting on Ms. Cramer's appeal. The doctrine of judicial immunity from liability applies.

4. PLAINTIFF CRAMER IS COLLATERALLY ESTOPPED FROM ASSERTING ANY MATTERS SHE RAISED IN THE MICHIGAN STATE COURT ACTION.

Without entering into the controversy over whether the principle is "res judicata" or "collateral estoppel",

Overseas Motors, Inc. v Import Motors, Ltd. Inc, 375 FSupp 499, 509-510, n.2 - n.4 (ED Mich 1974), aff'd 519 F2d 119 (6th Cir 1975), cert denied, 423 US 987, 96 SCt 395, 46 LEd2d 304 (1975)

it is an inherent principle that a question or fact that was put in issue by a plaintiff in a court of competent jurisdiction, upon which there has been a final judgment, cannot be disputed in a subsequent action by the same plaintiff:

U.S. CONST, Art IV, sec 1;

28 USC 1738;

Overseas Motors, Inc v Import Motors, Ltd, Inc, supra, 375 FSupp at 509-524

Gambocz v Yelencsics, 468 F2d 837 (3rd Cir 1972);

Bruszewski v United States, 181 F2d 419 181 F2d 419 (3rd Cir 1950), cert denied, 340 US 865, 71 SCt 87, 95 LEd 632 (1950);

State of Maryland v Capital Airlines, Inc, 267 FSupp 298 (D Md 1967),

Booth v Baker Industries, Inc, 262 FSupp 168 (D Del 1966),

Smith v Mosier, 169 F 430 (CCNDNY 1909); and

Eclavea: State of Federal Law as Governing Applicability of Doctrine of Res Judicata or Collateral Estoppel in Federal Court Action, 19 ALRFed 709 (1974).

As shown by the history of Ms. Cramer's action, and as demonstrated in Ms. Cramer's various petitions (exhibit A to this Memorandum of Law), she has had the opportunity to and has put in issue in the Michigan State Courts, and to the United States Supreme Court, the same issues she is trying to put in issue in this federal District Court.

"(A) party should have a full and fair day to be heard on the issue but should not be able to litigate that issue ad nauseam. There must be an end to litigation at some point."
State of Maryland v Capital Airlines, 267 FSupp 298, 303-304 (DMd 1967)

It is time to say to Ms. Cramer -

STOP!

CONCLUSION

The action should be dismissed with prejudice.

Respectfully submitted,
FRANK J. KELLEY (P 15818)
Attorney General
GEORGE H. WELLER (P 26249)
Counsel for the defendant
members of the Michigan
Supreme Court
Office Address:
7th floor Law Building
525 West Ottawa
Lansing, Michigan 48913
(517) 373-8060

Dated:
August 9, 1979

Exhibit: A. Extracts from Ms. Cramer's Petition for Writ of Certiorari

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(As indicated previously herein, the above EXHIBITS are omitted here for the reason that they are on record in the U. S. Supreme Court, Docket No. 77-1558, Filed on April 27, 1978)

Filed September 26, 1979 - No. 9-72789
United States District Court - Detroit

OBJECTIONS TO MOTION FOR DISMISSAL BY DEFENDANT MEMBERS OF THE MICHIGAN SUPREME COURT

Now comes Petitioner-Cramer, in pro per, Defendant in wrongful foreclosure, and objects to motion for dismissal by Defendant Members of the Michigan Supreme Court, and Petitioner-Cramer says as follows:

1. Answering to paragraph 1 as to the inclusion of "scandalous" matter, Petitioner denies that she has included any "scandalous" matter on her own volition or choice, but that the matters are specifically related to the subject matter of the action and pertinent to the decision reported at 401 Mich 252.

2. Answering to paragraph 2 as to Federal court jurisdiction over the members of the Michigan Supreme Court, Petitioner states and avers that the Federal court has jurisdiction over the individual persons even it they are members of the Michigan Supreme Court; and further, the United States Supreme Court has always sustained District Court jurisdiction over State officers and to restrain individual state officers from doing what the 14th Amendment forbids the State to do." Chicago, B. & Q. R. Co. v Chicago, 166 US 226; Ex parte Virginia, 100 US 339. It is the established practice of the United States Supreme Court to sustain the jurisdiction of the federal courts to issue injunctions to protect rights safeguarded by the Constitution, Philadelphia Co. v Stimson, 223 US 605; Hays v Seattle, 251 US 233; Pennoyer v McConnaughy, 140 US 1; City of Mitchell v Dakota Telephone Co., 246 US 396.

Further, Petitioner-Cramer denies she is

seeking to have the Federal District Court exercise appellate jurisdiction over the Michigan Supreme Court, and Petitioner-Cramer states and avers that the "subject matter" is a question of law, and that the Court cannot dismiss the case without first assumming jurisdiction, and that the dismissal would be on the merits, not for lack of jurisdiction and not for want of jurisdiction. Bell v Hood, 327 US 678.

3. Answering to paragraph 3, Petitioner-Cramer denies that the individual persons, who are also members of the Michigan Supreme Court, are immune from liability coram non judice, and further, jurisdiction is not defeated by the possibility that the everments might fail to state a cause of action or a claim on which Petitioner could actually recover.

4. Answering to paragraph 4, as to collateral estoppel and certiorari having been denied by the United States Supreme Court, Petitioner-Cramer affirmatively states and avers that she is not collaterally estopped on any such matters for the reason that denial of certiorari makes no precedent and imports no expression of opinion on the merits of the case. State Bar of Michigan v Brotherhood of R.R. Trainmen, 1970, 174 NW2d 811, 383 Mich 201, revd. 91 S Ct 1076, 401 US 576, 28 L Ed 2d 339.

PETITIONER-CRAMER'S AFFIRMATIVE MATTERS

1. Where Petitioner's Complaint shows "Reversal" of the Michigan Supreme Court decision reported at 401 Mich 252, Petitioner-Cramer moves the Court and requests that said word "reversal" be amended to "Reformation", to correct error.

2. Relief to be sought - Reformation of Michigan Supreme Court decision reported at 401 Mich 252, and/or Writ of Error Coram non judice, or, in the alternative, injunctive relief.

For the reasons shown above, the motion for dismissal by Defendant members of the Michigan Supreme Court should be denied.

Respectfully submitted,

Virginia Cramer
Petitioner in pro per
Defendant in wrongful foreclosure

Dated:
September 20,1979

P.S. I bought some law books. But, I am having a very difficult time in trying to read the small print.
Ex Parte Virginia(Cramer)

BRIEF IN SUPPORT OF OBJECTIONS TO MOTION FOR DISMISSAL BY DEFENDANT MEMBERS OF THE MICHIGAN SUPREME COURT

FACTS

Petitioner-Cramer does not dispute the facts as shown in the Memorandum of law on behalf of the Justices of the Michigan Supreme Court, except as to certain omissions, as follows:

Petitioner-Cramer has set forth the following eight (8) paragraphs in her Motion for Preliminary, Permanent and Eternal Injunctive Relief:

1. Restraining and enjoining the taking of judicial notice without proof and without evidence.

2. Restraining and enjoining the rendering of decisions and/or opinions in favor of unscrupulous litigants and their attorneys who submit erroneous, falsified and fraudulent statements in their pleadings to the court and where said statements are unsupported and not priorly litigated in the procedures of the lower courts.

3. Restraining and enjoining the rendering of decisions and/or opinions based on false facts.

4. Restraining and enjoining the rendering of decisions and/or opinions where due process and equal protection of the laws are denied and in violation of the Fourteenth Amendment to the United States Constitution.

5. Restraining and enjoining the rendering of decisions and/or opinions in favor of implied covenants and agreements which are unenforceable.

6. Restraining and enjoining the rendering of decisions and/or opinions by failure in their duty to declare a contract or covenant and agreement illegal.

7. Restraining and enjoining the rendering of decisions and/or opinions by exertion of power due to mental disability and jeopardizing the security of property and title-holders of property and jeopardizing the security of the State.

8. Restraining and enjoining the rendering of decisions and/or opinions by exertion of power where fraud is perpetrated upon the court and condoned by the court.

The above shown matters are related to the subject matter of the action. Where the statements are made are related to the subject matter, they cannot be stricken as "scandalous."

ADDITIONAL FACTS

Petitioner-Cramer has never been heard and never allowed to be heard in the State court on said foreclosure matter. She has been systematically and continuously been denied a day in court as to the said foreclosure matter. Yet, the State courts have been writing decisions and making determinations, at every level, "ex parte" as to your Petitioner-mortgagor regarding the foreclosure matter. The decision reported at 401 Mich 252 is based on false facts.

ARGUMENT

Where the matters are related to the subject matter of the action they should not be stricken where they are material, pertinent and obviously not false. The material and pertinent matters cannot be excluded from the pleadings. These material and pertinent matters are an important part of the issues and elements where Petitioner-Cramer has been denied "a day in court" as to the foreclosure matter, and where she has never been heard and never allowed to be heard.

> "To strike material as scandalous, it must be obviously false and unrelated to the subject matter of the action."
> Gateway Bottling, Inc. v Dad's Rootbeer Co., D.C. Pa. 1971, 53 F. R. D. 585

As for example, where the Michigan Supreme Court members, in their cecision reported at 401 Mich 252, have said "we are convinced that under the terms of the contract before us, plaintiff has defaulted on a condition. By refusing to pay monies into escrow, plaintiff failed to perform a covenant the performance of which was a condition of the contract." These, among many other statements and determinations made by the members of the court, are false statements.

In Cramer's "Summary of Facts" in her brief on appeal, on page 26, as docketed in No. 57215 in the Michigan Supreme Court, it shows:

> "The mortgagor had maintained her payment schedule as to the principal and interest in an exemplary manner and she had made substantial prepayments of principal together with having made a regular monthly escrow deposit each and every month without fail."

Cramer has cancelled checks to show that she paid "escrow" each and every month without fail, and that the records of Metropolitan Federal Savings and Loan (mortgagee) show that Cramer paid "escrow" each and every month without fail, prior to the foreclosure date of May 23, 1968.

The Defendants-Metropolitan Federal Savings and Loan and their attorneys have perpetrated a fraud upon the court and the court has condoned the fraud, for the reason that Cramer's cancelled checks were filed in the court record as "exhibits" and where said "exhibits" show that Cramer paid "escrow" each and every month without fail prior to the foreclosure date of May 23, 1968.

No person is immune to becoming mentally disabled. No person is immune to becoming sick.

See: Burger, A Sick Profession, 5 Tulsa L. J. 1 (1968) and where Judge Warren E. Burger, in describing the state of the legal profession, commented and posited the following proposition:

"(1) the legal profession as a whole has very poor standing;

(2) there are many causes for this, some of them incompetence, misconduct, bad manners and lack of training of a great many lawyers who appear in the courts; and

(3) there is something we can and ought to do about this as the English bar and bench did a century ago."

JURISDICTION

The court must assume jurisdiction first for a matter to be possibly dismissed, and then dismissal would be on

the merits, not for want of jurisdiction.

Petitioner-Cramer moves the court to amend the word "reverse" to read as "reformation." Petitioner-Cramer is not seeking "appellate review" in the federal District Court.

For cases discussing the distinction between questions going to the merits and those going to the jurisdiction:

see: Illinois Central R. Co. v Adams, 180 US 28,

Geneva Furniture Co. v Karpen, 238 US 254

Nashville, C. & St. L.R. Co. v Taylor, 86 F 168

Further, it is the established practice of the United States Supreme Court to sustain the jurisdiction of the federal courts to issue injunctions to protect rights safeguarded by the Constitution, Philadelphia Co. v Stimson, 223 US 605; Hays v Seattle, 251 US 233; Pennoyer v McConnaughy, 140 US 1; City Railway Co. v Citizens' Railroad Co., 166 US 557; City of Mitchell v Dakota Telephone Co., 246 US 396.

and to restrain individual state officers from doing what the 14th Amendment forbids the State to do. Chicago, B. & Q. R. Co. v Chicago, 166 US 226; see also Ex parte Virginia, 100 US 339.

"If the court does later exercise its - jurisdiction to determine that the allega-

tions in the complant do not state a ground for relief, then dismissal of the case would be on the merits, not for want of jurisdiction." Bell v Hood, 327 US 678; Swafford v Templeton, 185 US 487; Binderup v Pathe Exchange, 263 US 291.

JUDICIAL IMMUNITY FROM LIABILITY

Judicial immunity from liability is a question of law, and as to whether said members acted in their judicial capacity or acted without authority as individual persons.

Jurisdiction is not defeated by the possibility that the averments might fail to state a cause of action on which Petitioner could actually recover, such as damages. "For it is well settled that the failure to state a proper cause of action calls for a judgment on the merits and not for a dismissal for want of jurisdiction. Whether the complaint states a cause of action on which relief could be granted is a question of law and just as issues of fact it must be decided after and not before the court has assumed jurisdiction over the controversy."
Bell v Hood, 327 US 678; Swafford v Templeton, 185 US 487; Binderup v Pathe Exchange, 263 US 291.

Whether or not the doctrine of judicial immunity from liability applies is a question of law, and it must be decided after and not before the court has assumed jurisdiction.

COLLATERAL ESTOPPEL

Petitioner-Cramer is not collaterally

estopped from asserting any matters she raised in the Michigan State court action; and she is not collaterally estopped by the denial of petition for writ of certiorari to the Michigan Supreme Court in the United States Supreme Court.

As Petitioner-Cramer understand it, her Petition for Writ of Certiorari was denied for the reason that fraud is alleged. The United States Supreme Court has said "denial of certiorari makes no precedent and imports no expression of opinion on the merits of the case." State Bar of Michigan v. Brotherhood of R. R. Trainmen, 1970, 174 NW 2d 811, 383 Mich 201, revd. 91 S. Ct. 1076, 401 US 576, 28 L Ed 2d 339.

CONCLUSION

For the reasons stated herein and in Petitioner-Cramer's Objections to Motion for Dismissal by Defendant Members of the Michigan Supreme Court, this Honorable federal court should deny the motion for dismissal.

Respectfully submitted,

Dated:
September 20,
1979

Virginia Cramer, Petitioner
in pro per, Defendant in
wrongful foreclosure

Filed August 9, 1979 - No. 9-72789
U. S. District Court

OBJECTION TO PETITION FOR REMOVAL OF CAUSE TO THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN (SOUTHERN DIVISION-DETROIT) AND MOTION FOR REMAND TO STATE COURT

The Defendants Metropolitan Savings Association, James I. McClintock, Roger C. Richards and John C. Denyer, and Co-Defendants McClintock Donovan Carson & Roach and James I. McClintock, Michael Doelle and William P. Thorpe, by their attorneys McClintock Donovan Carson & Roach, hereby object to the Petition for Removal of Cause to the United States District Court for the Eastern District of Michigan (Southern Division-Detroit) and Notice of Removal of the State case to the United States District Court heretofore filed in the instant action by the Plaintiff Virginia Cramer as follows:

1. As is evident from the pleadings filed herein Virginia Cramer was and is the Plaintiff in a case filed by her now pending in the Wayne County Circuit Court entitled Virginia Cramer v. Metropolitan Savings Association a/k/a Metropolitan Federal Savings and Loan Association, James I. McClintock, Roger C. Richards and John C. Denyer, jointly, severally and individually, Defendants, and McClintock Donovan Carson & Roach and James I. McClintock, Michael Doelle and William P. Thorpe, attorneys at law, jointly, severally and individually, Co-Defendants and Allen Counard, Attorney at Law, Co-Defendant, being No. 78-822-879 CZ, and Plaintiff in a prior action alleging the same subject matter which was

ultimately reported at 401 Mich 252. A copy of the Michigan Supreme Court decision entitled Cramer v Metropolitan Savings and Loan Association, 401 Mich 252 (1977), together with a copy of the Second Amended Complaint on which the case was ultimately decided, are attached hereto as Exhibits A & B, respectively.

2. As Plaintiff, Virginia Cramer is not entitled to removal pursuant to 28 USCA 1441, et seq.

3. This Objection to Petition and Motion to Remand are based upon the files and records of the State Court cause, the files and records herein, the Affidavit of William P. Thorpe filed herewith and Brief in Support hereof.

WHEREFORE, the Defendants and Co-Defendants pray that this matter be remanded to the Wayne County Circuit Court and that Defendants and Co-Defendants be awarded just costs and attorney fees in the amount of $1,000.00.

McCLINTOCK DONOVAN CARSON & ROACH
By WILLIAM P. THORPE (p 21436)
Attorneys for Defendants and Co-Defendants
Date: August 8, 1979

MEMORANDUM OF LAW IN SUPPORT OF OBJECTION TO PETITION FOR REMOVAL OF CAUSE TO THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN (SOUTHERN DIVISION-DETROIT) AND MOTION FOR REMAND TO STATE COURT

28 USC 1441, et seq. provides for a procedure whereby a defendant in a state

action may remove the same to the federal courts upon compliance with the procedures stated therein. The statute does not provide for or allow removal of the case by a plaintiff.

Virginia Cramer filed the action which she wishes to remove in the Wayne County Circuit Court for the State of Michigan and as Plaintiff she has no right to removal. 28 USCA 1441(a); 28 USCA 1446(a); In re Walker, C.A. Tex. 1967, 375 F2d 678; Union Const. Co. v Dillingham Corp., 334 F Supp 502 (1972); Coastal Air Service, Inc. v. Tarco Aviation Service, Inc., 301 F Supp 586 (1969).

Mrs. Cramer's convoluted attempt to show that she is the Defendant does not make it a fact. She instituted the prior action reported at 401 Mich 252 and the instant action subject to the removal petition entitled Virginia Cramer v. Metropolitan Savings Association, et al., now pending in the Wayne County Circuit Court, being No. 78 822 879 CZ.

In addition to Mrs. Cramer having no standing for removal, she failed to file a bond pursuant to 28 USC 1446(d), which states:

> Each petition for removal of a civil action or proceeding, except a petition in behalf of the United States, shall be accompanied by a bond with good and sufficient surety conditioned that the defendant or defendants will pay all costs and disbursements incurred by reason of the removal proceedings should it be determined that the case was not removal or was improperly removed.

Virginia Cramer's blatant disregard of the rules subjects her to costs pursuant to 28 USC 1447(c), which states:

> If at any time before the final judgment if appears that the case was removed improvidently and without jurisdiction, the district court shall remand the case, and may order the payment of just costs. A certified copy of the order of remand shall be mailed by its clerk to the clerk of the State court. The State court may thereupon proceed with such case.

It is obvious that Mrs. Cramer removed this action improvidently and there is no jurisdiction or gounds therefor.

For the reasons stated above, Defendant and Co-Defendants respectfully request that this matter be remanded to the Circuit Court for the County of Wayne, State of Michigan together with an order directing Plaintiff to pay Defendants and Co-Defendants just costs and attorney fees in the amount of $1,000.00.

Respectfully submitted,
McCLINTOCK DONOVAN CARSON
& ROACH
By WILLIAM P. THORPE (P 21436)
Attorneys for Defendants and
Co-Defendants

Dated:
August 8, 1979

EXHIBIT "A" - Filed August 9, 1979
U. S. District Court - No. 9-72789

CRAMER v METROPOLITAN SAVINGS & LOAN ASSOCIATION

Docket No. 57215. Argued October 7, 1976 (Calendar No. 18). -- Decided October 6, 1977.

Virginia Cramer brought an action to enjoin foreclosure of a mortgage and for damages against Metropolitan Savings and Loan Association and its officers, alleging excessive escrow demands and mishandling of the escrow funds as a defense to the foreclosure. The Wayne Circuit Court, Thomas J. Murphy, J., granted judgment for the defendants on a finding that the plaintiff was in default. Plaintiff's motion to file an amended complaint was denied and Edward F. Bell, J., granted the defendants summary judgment on the ground of res judicata. The Court of Appeals, Danhof, P.J., and McGregor and Levin, JJ., reversed in a per curiam decision (Docket No. 9619). 34 Mich App 638; 192 NW2d 50 (1971). Plaintiff filed an amended complaint of six counts which alleged wrongful foreclosure, and other wrongdoing, and Richard L. Hammer, J., granted summary judgment for Metropolitan. The Court of Appeals, T. M. Burns, P.J., and Adams and Bashara, JJ., affirmed as to five counts, but reversed as to the count alleging breach of a fiduciary relationship (Docket No. 14149). A jury in Circuit Court, John R. Kirwan, J., found no cause of action against the defendants on the allegation of a breach of a fiduciary duty. The Court of Appeals, R. B. Burns, P.J., and T. M. Burns and R. M. Maher, JJ., affirmed (Docket No. 18948). The plaintiff appeals. Held:

1. The existence of a statute which permits a mortgagee to foreclose a mortgage by advertisement rather than by judicial process does not constitute state action under the Equal Protection Clauses of the Michigan and Federal Constitutions. Since the power of sale is an incident of the private right to contract, a mortgagee who exercises a foreclosure option is relying on a contract remedy, and not on a right created by statute.

2. The remedy for breach of a covenant is damages or an injunction, whereas the remedy for default on a condition subsequent is termination of the contract. The question whether a particular provision in a contract is a condition or a covenant depends in large part on the language of the contract, interpreted with the intent of the parties as the paramount consideration. Under the terms of the mortgage in the instant case, plaintiff failed to perform a covenant to pay monies into escrow, the performance of which was a condition of the contract. The remedy authorized by the mortgage was termination by foreclosure of the mortgage. This case does not involve a mere technical breach of the contract by the mortgagor, but a refusal to make the payments as agreed.

Affirmed.

Filed October 6, 1977 - No. 57215
STATE OF MICHIGAN SUPREME COURT

VIRGINIA CRAMER, Plaintiff-appellant,
v
METROPOLITAN SAVINGS AND LOAN ASSOCIATION, ET AL, Defendants-Appellees.

BEFORE THE ENTIRE BENCH (except Moody, J.)
KAVANAGH, C.J.

This appeal arises out of a mortgage foreclosure on plaintiff's property by defendant after the latter accelerated the debt because of an alleged deficiency in plaintiff's "escrow" account. The parties have been before the Court of Appeals in this matter on three occasions, the last appeal to that Court resulting in an affirmance of a jury's verdict for defendant on a breach of fiduciary duty count brought by plaintiff.

This Court granted leave to consider plaintiff's allegations of error in all of the proceedings below.

In June, 1963, plaintiff executed a mortgage application to defendant Metropolitan Savings and Loan Association (hereinafter "Metropolitan") which then issued a "commitment letter", dated July 3, 1963, setting forth the conditions of the loan.

Pursuant to that commitment, plaintiff executed a promissory note secured by a mortgage delivered to defendant on July 29, 1963.

The mortgage included the following terms:

"Mortgagor covenants and agrees: * * *

"2. In order more fully to protect the security of this mortgage, in addition to the monthly installments of principal and interest, to pay to mortgagee an installment of the taxes and assessments levied or to be levied against said premises that

will next become due, (and) an installment of the premium or premiums that will next become due to renew the insurance on said premises (as hereinafter provided) * * * . The said installments shall be equal, respectively, to the taxes and assessments next due and the premium or premiums for such insurance, as estimated by mortgagee, less all sums already paid therefore, divided by the number of months to elapse before one month prior to the date when such taxes, assessments and premiums will become due, such sums to be held by mortgagee, without interest thereon, to pay said taxes, assessments and premiums when due. All payments for principal, interest, taxes, assessments and premiums shall be added together and the aggregate amount thereof shall be paid by mortgagor to mortgagee each month in a single payment. If the sum so deposited shall not be sufficient to pay the taxes, assessments and premiums when the same become due, mortgagor agrees to forthwith pay to mortgagee the amount of the deficiency, and if said deposits shall exceed the amount actually paid by mortgagee therefore, the excess shall be credited upon principal. * * *

"8. In the event of default in the payment of said indebtedness, or any part thereof, or in the performance of any of the covenants or conditions hereof, mortgagee may, without notice, at its option, declare the entire indebtedness secured hereby due,—then or thereafter, as it may elect, regardless of the date of maturity and is hereby authorized and empowered to sell or cause to be sold said premises, pursuant to the statute in such case made and provided, and out of the proceeds of the sale to retain the sums then due hereunder, and all costs and charges of the sale (including the

attorneys' fee provided by statute), rendering any surplus moneys to mortgagor. The commencement of proceedings to foreclose this mortgage in any manner authorized by law shall be deemed an exercise of the above option." * * *

The parties also executed a "Loan Settlement Statement", which itemized the monthly payments as follows:

Principal and Interest	$103.81
Tax Escrow	22.25
Insurance Escrow	4.00
MGIC (Mortgage Guaranty Insurance Company) Premium	3.44
	$133.50

The mortgage note, in the amount of $16,500, provided for a monthly payment of $103.81, constituting principal and interest, and made no mention of any other amount for escrow or mortgage insurance premium.

For a period of time, plaintiff made timely payments, including escrow, and in fact, was well ahead of her repayment schedule for principal. There was a continuing dispute, however, over the escrow account, with plaintiff alleging that defendant had not paid her taxes and escrow premiums when due and that defendant was requiring excessive escrow payments.

Defendant admits that it allowed plaintiff's 1963-1964 taxes to become delinquent, but in 1965 paid the back taxes, including all penalties. Plaintiff finally stopped the escrow payments, and stated that she wished to make her tax and insurance payments directly. Plaintiff admits in her brief that she did not maintain a current escrow account.

On May 23, 1968, defendant instituted foreclosure proceedings by advertisement pursuant to MCLA 600.3201 et seq.; MSA 27A.3201 et seq., and paragraph 8 of the mortgage agreement. Defendants complied in all respects with the requirements of the statute.

Plaintiff obtained a temporary restraining order, which was subsequently dissolved after the court determined that plaintiff was in default of her mortgage. The property was sold at a sheriff's sale on October 1, 1968 and plaintiff redeemed the property on June 5, 1969.

Following several judicial proceedings, including an appeal to the Court of Appeals, (34 Mich App 638; 192 NW2d 50 (1971)), plaintiff was allowed to file an amended complaint, which alleged breach of contract, abuse of process, libel, breach of fiduciary duty, invasion of privacy, and intentional infliction of emotional distress. Summary judgment was granted for defendant on March 27, 1972.

In an unpublished per curiam opinion (Docket No. 14149, released May 29, 1973), the Court of Appeals affirmed on all counts except that charging breach of fiduciary duty, which was remanded for trial. The subsequent jury trial on that issue resulted in a verdict for defendants, and judgment was entered September 21, 1973.

The Court of Appeals affirmed on June 2, 1975.

I

The appeal raises two questions which merit discussion. First, plaintiff questions the constitutionality of the Michigan foreclosure by advertisement statute, which provides in part:

> "Every mortgage of real estate, containing therein a power of sale, upon default being made in any condition of such mortgage, may be foreclosed by advertisement, in the cases and in the manner hereinafter specified." MCLA 600.3201, MSA 27A.3201.

> "To entitle any party to give a notice as hereinafter prescribed, and to make such foreclosure, it shall be requisite:
>
> "(1) That some default in a condition of such mortgage shall have occurred, by which the power to sell became operative * * * ." MCLA 600.3204, MSA 27A.3204.

The essence of plaintiff's constitutional argument is that the foreclosure statute grants a mortgagee the power to terminate a mortgage relationship by use of procedures that are not in harmony with the requirements of the Fourteenth Amendment to the United States Constitution and Article 1, section 17 of the Michigan Constitution. Specifically, she claims that the Michigan foreclosure by advertisement statute, as applied, violated the due process clauses of the two constitutions in that it requires neither a notice of hearing, nor a hearing to establish the debt.

Plaintiff's argument rests upon the United States District Court's decision in Northrip v Federal National Mortgage Ass'n, 372 FSupp 594 (ED Mich, 1974).

There the court acknowledged that a due process question is raised only where there is state action, the test for which is whether or not the state has significantly involved itself in the challenged conduct. The Northrip court held that state action was present because the "statute encourages mortgagees to seek foreclosure by advertisement, rather than by judicial process * * *". 372 FSupp 597.

The district court also ruled that while a power of sale may be deemed to waive the right to a due process hearing before foreclosure by advertisement, there was no such waiver in the case before it. The plaintiff had not "voluntarily, intelligently and knowingly" waived her due process rights because the power of sale did not include any terms of waiver, nor did it notify plaintiff of the procedure to be utilized in foreclosing upon her property.

The district court ultimately held that the statute, as applied, did not satisfy minimum due process requirements "because the process failed to provide an adequate opportunity to be heard before the taking of a significant property interest". 372 F Supp 599.

Plaintiff in her brief fails to note, however, that the lower court decision in Northrip was subsequently reversed. The Sixth Circuit Court of Appeals disavowed the state action analysis employed and the result reached by the district court. 527 F2d 23 (CA 6, 1975).

The Federal appellate court held that the existence of a statute which permitted

a mortgagee to foreclose by advertisement rather than by judicial process did not constitute state action.

Since "the power of sale is an incident of the private right to contract. Equitable Trust Co. v Barlum Realty Co. 294 Mich 167; 292 NW 691 (1940)", a mortgagee who exercises a foreclosure option is relying on a contract remedy, and not on a right created by the statute. 527 F2d 26-27. Therefore, the state cannot be said to be significantly involved, through "encouragement", in the challenged conduct, and a due process question is consequently not presented.

Our own Court of Appeals in National Airport Corp v Wayne Bank, 73 Mich App 572; 252 NW2d 519 (1977), has recently adopted the Sixth Circuit's full and definitive analysis of the Michigan foreclosure by advertisement statute. We do likewise.

Accordingly, we hold that the plaintiff's instant claim of unconsitutionality under both the Michigan and Federal Constitutions fails for lack of the existence of state action.

II

We next consider whether or not plaintiff's refusal to make timely escrow payments for taxes and insurance constituted a "default * * * in any condition of (the) mortgage", alaowing foreclosure by advertisement pursuant to MCLA 600.3201; MSA 27A.3201.

The mortgage provides that:

"Mortgagor covenants and agrees:

* * *

"2. In order more fully to protect the security of this mortgage, in addition to the monthly installments of principal and interest, to pay to mortgagee an installment of the taxes and assessments levied or to be levied against said premises that will next become due, (and) an installment of the premium or premiums that will next become due to renew the insurance on said premises * * *."

Paragraph eight of the mortgage further provides that in the event of default "in the performance of any of the covenants or conditions hereof", mortgagee may accelerate the full indebtedness and sell the property pursuant to the statute.

It is plaintiff's argument that the above provisions in the mortgage constitute a covenant, the remedy for breach of which is an action for damages or an injunction.

Defendants, on the other hand, contend that paragraphs 2 and 8, when read together, make monthly payments into escrow a condition, and default thereon allows foreclosure by advertisement.

Commonly, a covenant is regarded as an assurance that something will be done in the future, while a condition is regarded as "a fact or event that affects legal relations; it is a cause of some change in those legal relations". 3A Corbin, Contracts, sections 627, 633. The remedy for breach of a covenant is damages or an injunction, whereas the remedy for default on a condition

subsequent is termination of the contract. Capitol Land Co v Zorn, 134 Ind App 431, 433; 184 NE2d 152, 158 (1962); 17A CJS, Contracts, sections 339, 399.

The question whether a particul provision in a contract is a covenant or, alternatively, a condition, does not admit of an absolute answer. Rather, the resolution of the issue depends in large part on the contract, with the intent of the parties being the paramount consideration. McIntosh v Groomes, 227 Mich 215; 198 NW 954 (1924).

Recognizing the parties' prerogative to provide for their own contract, we said in White v Burkhardt, 338 Mich 235, 239; 60 NW2d 925 (1953):

> "Foreclosure of mortgages by advertisement and sale has been in use in this State for about 100 years, and is well understood. Such statutory foreclosures should not be set aside without some good reason therefor. Markoff v Tournier, 229 Mich 571, and Detroit Trust Co v Agozzinio, 280 Mich 402, 496. Statutory foreclosures are a matter of contract, authorized by the mortgagor, and ought not to be hampered by an unreasonably strict construction of the law. Lee v Clary, 38 Mich 223, and Peterson v Jacobs, 303 Mich 329, 335."

We are convinced that under the terms of the contract before us, plaintiff has defaulted on a condition. By refusing to pay monies into escrow, plaintiff failed to perform a covenant the performance of which was a condition of the contract. 3A Corbin, supra, sections 633, 635. Plaintiff agreed that Metropolitan would have the option of foreclosing pursuant to the statute if she did not perform her covenant. The remedy

is concededly a harsh one, but "harshness or hardship alone will not defeat a foreclosure". Schechtman v Grobbel, 226 So 2d 1, 3 (Fla Dist Ct App, 1969)

Despite plaintiff's insistence to the contrary, this case does not involve a mere technical breach by the mortgagor as was present in Schechtman, supra. In that case the Florida District Court of Appeals refused to allow foreclosure where the mortgagor paid escrow monies to a bank rather than to the mortgagee, as required by the mortgage. The court emphasized that, even though the payment was made to the wrong institution, the escrow balance was at all times current and the security of the mortgage was never in jeopardy. Here plaintiff refused to make the payments.

We agree with the trial court and the Court of Appeals that the foreclosure was licit.

Affirmed. Costs to defendant.

THOMAS GILES KAVANAGH
CHARLES L. LEVIN
MARY S. COLEMAN
G. MENNEN WILLIAMS
JOHN W. FITZGERALD
JAMES L. RYAN

EXHIBIT "B" - Filed August 9, 1979
U. S. District Court - No. 9-72789

STATE OF MICHIGAN, IN THE CIRCUIT COURT
FOR THE COUNTY OF WAYNE
Civil Action No. 115-792
Virginia Cramer, Plaintiff vs.
Metropolitan Federal Savings and Loan
Association, a United State corporation,
et al, Defendants

SECOND AMENDED COMPLAINT

NOW COMES PLAINTIFF VIRGINIA CRAMER by her attorneys, Allen J. Counard and D. Lawrence Kevelighan, and in her Second Amended Complaint says:

COUNT I - BREACH OF CONTRACT

1. That she is a resident of Dearborn Heights, Wayne County, Michigan.

2. That the Defendant METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION is a United States corporation and that its principal place of business is located in the City of Detroit, County of Wayne, State of Michigan.

3. That the Defendant JAMES I. McCLINTOCK is and was Chairman of the Board of Direcors of METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION at all times pertinent hereto.

4. That the Defendant ROGER C. RICHARDS is and was President of METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION at all times pertinent hereto.

5. That the Defendant JOHN C. DENYER is and was Assistant Vice-President of METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION at all times pertinent hereto.

6. That the Plaintiff on July 29, 1963, entered into a contract to purchase property situated in the City of Dearborn Heights, County of Wayne, State of Michigan, described as follows: The East 33 feet of Lot 5 and West 25 feet of Lot 6 of Gordon Saperstein Subdivision No. 1 and part of the Southwest quarter of Section 6, Town 2 South, Range 10 East, Dearborn Township, Wayne County Michigan as recorded in Liber 80, Page 2, Wayne County Records.

7. That Plaintiff, in order to purchase the aforementioned property, borrowed from Defendant METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION Sixteen Thousand Five Hundred ($16,500.00) Dollars with interest thereon at the rate of five and three-quarters (5-3/4%) per cent per annum while not in default and seven (7%) per cent per annum during the period of any default, and Plaintiff signed a "Mortgage Note" for same dated the 29th day of July, 1963, Plaintiff thereby agreeing to pay said sum.

8. That pursuant to the aforementioned "Mortgage Note" the Defendant METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION could, at its option, in lieu of increasing the rate of interest as above provided during the period of any default, collect a "late charge" not to exceed an amount equal to four (4%) per centum of any installment which is not paid within fifteen (15) days from the due date thereof, to cover the extra expense involved in handling delinquent payments.

9. That the Plaintiff received from Defendant METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION payment cards which clearly indicated thereon that no late charges would be due during the fifteen (15) day grace period, and that Plaintiff to avoid

late charges, should pay within said fifteen (15) day period.

10. That pursuant to the terms of the aforementioned "Mortgage Note" Plaintiff expressly reserved the right to prepay installments of principal.

11. That Plaintiff, during the period July 29, 1963 through and including May 14, 1968, made one hundred thirty (130) payments of principal when only fifty-six (56) payments were regularly scheduled during said period.

12. That paragraph 2 of the aforementioned "Mortgage" agreement reads as follows:

> "In order more fully to protect the security of this mortgage, in addition to the monthly installments of principal and interest, to pay to mortgagee an installment of the taxes and assessments levied or to be levied against said premises that will next become due, an installment of the premium or premiums that will next become due to renew the insurance on said premises (as hereinafter provided) and, if any life insurance is payable or assigned to mortgagee as additional security for said indebtedness, an installment of the premium or premiums that will next become due thereon. The said installments shall be equal, respectfully, to the taxes and assessments next due and the premium or premiums for such insurance, as estimated by mortgagee, less all sums already paid therefor, divided by the number of months to elapse before one month prior to the date when such taxes, assessments and premiums will become due, such sums to be held by

mortgagee, without interest thereon, to pay said taxes, assessments and premiums when due. All payments for principal, interest, taxes, assessments and premiums shall be added together and the aggregate amount thereof shall be paid by mortgagor to mortgagee each month in a single payment. If the sums so deposited shall not be sufficient to pay the taxes, assessments and premiums when the sums become due, mortgagor agrees to forthwith pay to mortgagee the amount of the deficiency, and if said deposits shall exceed the amount actually paid by mortgagee therefor, the excess shall be credited upon principal."

13. That Defendant METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION estimated the amounts necessary to pay taxes, assessments and insurance on said property and added this amount to the monthly principal and interest payment and sent plaintiff payment cards for the total monthly payment due.

14. That Defendant METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION on various occasions breached the "Mortgage" agreement by failing to pay the taxes on the above property when due, thereby allowing said taxes to become delinquent.

15. That Plaintiff had timely paid escrow monies which were accepted by Defendant.

16. That Defendant METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION breach the "Mortgage" agreement by not crediting to Plaintiff's principal account escrow monies not actually paid out by the Defendant-Mortgagee during the yearly estimate period.

17. That the aforementioned payment cards stated that the payments were due on the fifteenth (15th) of each month and late charges would be added after the thirtieth (30th) of each month.

18. That the aforementioned payment cards were part of the agreement between the parties and allowed Plaintiff to have a fifteen (15) day period beyond the due date to pay.

19. That Plaintiff made payments pursuant to the sums stated on the payment cards through May 14, 1968.

20. That Defendant breached the agreement between the parties on May 23, 1968, by causing to be published in the Detroit Legal News a "Notice of Mortgage Sale" because the payment due on May 15, 1968, had not been made.

21. That Defendants "Notice of Mortgage Sale" publication of May 23, 1968, stated that " . . . on which mortgage there is claimed to be due at the date of this notice, the sum of TWELVE THOUSAND FIVE HUNDRED NINETEEN AND 37/100 ($12,519.37) DOLLARS . . . "

22. That Defendants' records showed the principal balance owing as of May 23, 1968, to be TWELVE THOUSAND FORTY-ONE AND 91/100 ($12,041.91) DOLLARS.

23. That Defendants' records showed no monies were advanced by the Defendants for taxes, assessments or insurance premiums as of May 23, 1968, the date of said foreclosure publication.

24. That the taxes, assessments and insurance premiums due or to become due on said mortgaged property are titleholder's liabilities and that plaintiff's liability for taxes, as titleholder of said property, is irrevocable, non-assignable and non-transferable.

25. That plaintiff's liability for taxes, assessments and insurance premiums is not an indebtedness owed to Defendant-Mortgagee as Defendant-Mortgagee had not advanced any of its money as payment for said liabilities as of May 23, 1968.

26. That no liabilities for taxes, assessments and insurance premiums were due or overdue as of May 23, 1968, on plaintiff-titleholder's aforementioned property.

27. That Defendants proceeded with their mortgage sale.

28. That Plaintiff, subsequent to said mortgage sale, redeemed the aforementioned property.

29. That as a result of Defendants' aforementioned acts, Plaintiff was forced to obtain a new mortgage on the aforementioned property at a higher rate of interest, that being at seven (7%) per cent per annum.

30. That Plaintiff incurred attorney fees because of the Defendants' aforementioned actions of breach of contract.

31. That the aforementioned mortgage note was originally held out to be at five and one-half (5-1/2%) per cent per annum, but that the note as signed at five and three-quarters (5-3/4%) per cent per annum

was held out by Defendants to include the additional one-quarter of one (1/4 of 1%) per cent per annum for mortgage insurance through Mortgage Guaranty Insurance Corporation (MGIC).

32. That Defendants, when estimating escrow amounts, again included amounts for mortgage insurance.

33. That Plaintiff was not furnished each and every year a statement of disbursements from her escrow account, although request therefore was made and Plaintiff was thus deprived of necessary information to easily fulfill her personal Federal Income Tax obligations in a timely and exact manner.

34. That as a result of Defendants breach of contract Plaintiff has suffered the following damages, to wit:

(a) Total difference in interest rates of plaintiff's original mortgage with defendant and her new mortgage: $5,032.30

(b) Costs of foreclosure: $1,188.74

(c) Closing costs in botaining new mortgage: $160.50

(d) Legal fees incurred to date: $2,957.30

WHEREFORE your Plaintiff prays that this Honorable Court grant judgment against the Defendant METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION on the within Count I in the amount of NINE THOUSAND THREE HUNDRED THIRTY-EIGHT and 84/100 ($9,338.84) DOLLARS.

COUNT II - ABUSE OF PROCESS

35. Plaintiff realleges paragraphs 1 through 34 of Count I.

36. That during the period July 29, 1963, through May 14, 1968, the plaintiff had at various times complained to Defendant METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION and various of its employees, agents, officers and directors about the non-timely payment of her property taxes on the aforementioned property.

37. That during the period July 29, 1963, through May 14, 1968, the plaintiff had at various times complained to the Defendant METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION and various of its employees, agents, officers and directors about what Plaintiff felt was a miscalculation of the estimates for her escrow account.

38. That Plaintiff, on or about the last part of April 1968 or the first part of May 1968, telephoned Defendant JAMES I. Mc CLINTOCK in his capacity as Chairman of the Board of Directors of METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION and PLAINTIFF informed him of the non-payment and/or delinquent payment of the property taxes on the aforementioned property and she was told there was nothing wrong with her taxes being in default.

39. That because of the aforementioned non-timely payment of the property taxes and the aforementioned claimed miscalculations of her escrow account, Plaintiff asked to pay her own obligations rather than pay the escrow sums.

40. That Plaintiff's request to pay her

own taxes, assessments and insurance because of the past actions of Defendants' was met with great resistance and a denial of her request.

41. That Plaintiff brought to the attention of Defendants the non-timely payment of her property taxes, the miscalculation of her escrow fund and their breach of the "Mortgage Note" and "Mortgage Agreement".

42. That in May 1968, prior to the foreclosure publication, Defendant JOHN C. DENYER told Plaintiff to "hire a bookkeeper and a lawyer."

43. That in the period February 21, 1968 to April 19, 1968, Plaintiff received two different sets of payment cards in addition to the set of payment cards she was then making payments with.

44. That in the early part of April 1968, Plaintiff asked Defendant JOHN C. DENYER for receipts for all disbursements from her escrow account but was denied same.

45. That Plaintiff received a letter from Defendant ROGER C. RICHARDS, dated April 25, 1968, denying Plaintiff's request for the aforementioned receipts.

46. That Defendants response to the aforementioned rightful complaints and justifiable demands of Plaintiff was to institute foreclosure by Sheriff's sale.

47. That the first said publication of foreclosure appeared in the Detroit Legal News on May 23, 1968.

48. That said first publication of Mortgage Sale was well within the aforementioned

fifteen (15) day period when no late charges would be assessed.

49. That the Defendants caused to be posted in public places a copy of said publication, to wit: in the City-County Building, Two Woodward Avenue, Detroit, Michigan, and on the aforementioned property of the plaintiff.

50. That on October 1, 1968, the Sheriff of Wayne County executed a deed to the aforementioned property to Defendant METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION who bid in on said Sheriff's sale.

51. That the Defendants maliciously, knowingly, and in a calculating manner, and in utter disregard of the aforementioned "Mortgage Note", "Mortgage" agreement, and payment cards, had preconceived the aforementioned foreclosure in a manner they knew, or should have known, was an Abuse of Process and not proper under the circumstances.

52. That in view of the past exemplary payment-record of the plaintiff, the Defendants election of the acceleration clause of the "Mortgage" agreement was unwarranted, unjust and an Abuse of Process.

53. That under the existing circumstances the institution of foreclosure by Sheriff's sale was an Abuse of Process, was harsh, unjust and unwarranted.

54. That in view of the bona fide dispute between the parties as to the calculation and handling of Plaintiff's escrow funds, the institution of foreclosure by Sheriff's sale was an Abuse of Process.

55. That in view of the prior payment record of Plaintiff, the institution of foreclosure by Sheriff's sale was an Abuse

of Process.

56. That Plaintiff believes the Defendants have not foreclosed on other mortgagors within the aforementioned fifteen (15) day period.

57. That Plaintiff believes the Defendants have not foreclosed on other mortgagors with a history of payment as exemplary as hers.

58. That Plaintiff believes Defendants acted in the unwarranted, illegal and unjustified manner herein alleged, partly because she is a single woman.

59. That Defendant ROGER C. RICHARDS wrote plaintiff a letter in August 1968 complimenting plaintiff on her exceptional payment record.

60. That all of the aforementioned acts of Defendants were malicious, were without any just or probable cause, were illegal and oppressive, and were done with a wanton and reckless disregard of the rights of the Plaintiff and with the intent of causing Plaintiff to lose her home.

61. That Defendants had an ulterior motive or purpose in exercising such use of process.

62. That the actions of Defendants damaged Plaintiff's good reputation in the community.

63. That the actions of Defendants damaged Plaintiff's credit standing in the community.

64. That the actions of Defendants caused Plaintiff much mental distress, some physical ill health, nervousness and tension.

WHEREFORE your Plaintiff prays that this Honorable Court grant judgment for general, exemplary and punitive damages against the Defendants, jointly, individually and severally, on the within Count II in the amount of ONE HUNDRED THOUSAND AND NO/100 ($100,000.00) DOLLARS.

COUNT III - LIBEL AND SLANDER

65. Plaintiff realleges paragraphs 1 through 64 of Counts I and II.

66. That Defendants, on or about May 16, 1968, maliciously prepared and composed, of and concerning Plaintiff, a certain writing, to wit:

"McCLINTOCK, FULTON, DONOVAN & WATERMAN, Attys., 2150 Guardian Bldg., Detroit, Michigan 48226.

No. 01 04-6326

NOTICE OF MORTGAGE SALE--Default having been made in the conditions of a certain mortgage made by VIRGINIA CRAMER to METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, a United States corporation, dated the 29th day of July, 1963, and recorded in the office of the Register of Deeds for the County of Wayne and State of Michigan, on the 13th day of August, 1963, in Liber 15124, of Wayne County Records, on Page 270, on which mortgage there is claimed to be due at the date of this notice, the sum of TWELVE THOUSAND FIVE HUNDRED NINETEEN AND 37/100 ($12,519.37) DOLLARS, and an attorney's fee as provided for in said mortgage, and no suit or proceedings at law having been instituted to recover the moneys secured by said mortgage, or any part thereof,

NOTICE IS HEREBY GIVEN, that by virtue of the power of sale contained in said mortgage, and the statute in such case

made and provided, on TUESDAY, THE 20th DAY OF AUGUST, 1968, at twelve o'clock noon, Local Time, the undersigned will, at the Southerly or Jefferson Avenue entrance to the City-County Building, in the City of Detroit, Michigan, that being the place where the Circuit Court for the County of Wayne is held, sell at public auction, the premises described in said mortgage, or so much thereof as may be necessary to pay the amount then due on said mortgage, including legal costs and attorney's fees, and taxes or insurance that the undersigned may pay on or prior to the date of said sale, and interest at 7 per cent per annum thereon, which said premises so to be sold are situated in the City of Dearborn Heights, County of Wayne, Michigan, and are described as:

East 33 feet of Lot 5 and West 24 feet of Lot 6 of Gordon-Saperstein Subdivision No. 1 Of Part Of The SW 1/4 Of Sec. 6, T2SR10E, Dearborn Township WCM As Recorded in L80 P2 Wayne County Records,

The redemption period as determined under Stat. Ann. 27A.3240 is one year from the time of such sale.

Dated May 23, 1968

METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, A United States corporation,
Mortgagee

McCLINTOCK, FULTON, DONOVAN & WATERMAN,
Attorneys for Mortgagee, 2150 Guardian Bldg.
Detroit, Michigan 48226

67. That said writing was false in that Plaintiff was not in default on her "Mortgage Note" and "Mortgage" agreement.

68. That Defendants knew, or should have known, that said writing was false.

69. That Defendants delivered said writing to the Detroit Legal News and caused

said writing to be published on May 23 and 30, 1968; June 6, 13, 20 and 27, 1968; July 4, 11, 18 and 25, 1968; and August 1, 8 and 15 of 1968.

70. That pursuant to the Defendants malicious intent said writing was read by many and diverse persons.

71. That Plaintiff received telephone calls and mail from individuals, realtors, mortgage companies, etc., referring to said written publication, and was embarrassed and imposed upon to the extent of having various persons trespass upon her premises at various times of the day to measure, survey, appraise and inspect the premises, all of which embarrassed, humiliated, disgranced and frightened Plaintiff, in open view of her friends and neighbors.

72. That an individual asked why Plaintiff did not pay her debts.

73. That Plaintiff had great difficulty securing a new mortgage as her credit standing in the community had been defamed and impaired and that several reputable lending institutions in the community refused to lend her funds to redeem the aforementioned property.

74. That the new mortgage secured by Plaintiff bore a higher rate of interest than that with Defendant METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION.

75. That Plaintiff had, prior to the aforementioned publication, enjoyed a good reputation for payment of her obligations, delaing honestly with other parties, and being of good and upright character.

76. That immediately upon learning of the first of said publications Plaintiff demanded that Defendants cease and desist all further publications.

77. That said wrongful publication caused Plaintiff much mental distress, physical ill health, nervousness and tension.

78. That Defendants, in disregard of the demands of Plaintiff, continued to allow said publication.

79. That as a result of said publication Plaintiff sustained damages by way of increased interest on her subsequent mortgage in the amount of FIVE THOUSAND THIRTY-TWO AND 30/100 ($5,032.30) DOLLARS, attorney fees to prosecute her just, legal and rightful claims in the amount of TWO THOUSAND NINE HUNDRED FIFTY-SEVEN AND 30/100 ($2,957.30) DOLLARS, as well as damage to her personal reputation and character all as heretofore alleged in excess of NINETY-TWO THOUSAND AND NO/100 ($92.000.00) DOLLARS.

WHEREFORE your Plaintiff prays that this Honorable Court grant judgment against the Defendants, jointly, individually and severally, for general, special, exemplary and punitive damages on the within Count III in the amount of ONE HUNDRED THOUSAND AND no/100 ($100,000.00) DOLLARS.

COUNT IV - BREACH OF FIDUCIARY RELATIONSHIP

80. Plaintiff realleges paragraphs 1 through 79 of Counts I, II and III.

81. That pursuant to aforementioned paragraph 2 of the aforementioned "Mortgage" agreement Defendant METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION was to hold the escrow funds of Plaintiff interest free.

82. That Defendants were in a position of trust as regards to the handling of Plaintiff's escrow funds.

83. That there was between Plaintiff and Defendant a fiduciary relationship as regards the escrow money forwarded at various times by Plaintiff to Defendant METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION.

84. That Defendant METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION did not pay taxes on the aforementioned property and did not credit Plaintiff's principal account with sums not expended in a twelve-month estimate period and thus breached the aforementioned fiduciary relationship and position of trust.

85. That the Defendant METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION held Plaintiff's funds beyond a twelve-month escrow estimate period without paying Plaintiff interest on said funds thereby breaching the aforementioned fiduciary relationship and position of trust.

86. That Defendant METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION utilized the escrow funds of Plaintiff for its own purposes and use while not applying said escrow funds for the benefit of Plaintiff as it was bound to do thereby breaching the aforementioned fiduciary relationship and position of trust.

87. That Defendant METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION utilized the escrow funds of Plaintiff for its own purposes and use while not paying Plaintiff interest for the use of said funds thereby breaching the aforementioned fiduciary relationship and position of trust.

88. That Defendant METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION demanded from Plaintiff escrow funds in excess of the funds necessary to pay taxes, assessments and insurance on the aforementioned property during a twelve-month escrow estimate period, thereby breaching the aforementioned fiduciary relationship and position of trust.

89. That the acts alleged in this Count IV were done in a calculating, malicious and deliberate manner and intended to deprive Plaintiff of her rights and money and Defendant thereby breached the aforementioned fiduciary relationship and position of trust.

WHEREFORE your Plaintiff prays that this Honorable Court grant Judgment for general, special, exemplary and punitive damages against the Defendant METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION on the within Count IV in the amount of ONE HUNDRED THOUSAND AND NO/100 ($100,000.00) DOLLARS.

COUNT V - INVASION OF PRIVACY

90. Plaintiff realleges paragraphs 1 through 89 of Counts I, II, III and IV.

91. That the aforementioned publications and posting of notices were unlawful and malicious and without legal right or authority.

92. That Defendants claim of "default" against Plaintiff was false and any claim of deficiency or default because of claimed escrow shortages was disputed by the Plaintiff and known by the Defendants to be so disputed.

93. That said publications and posting of notices cause Plaintiff humiliation, embarrassment, exposure to public contempt and ridicule, disgrace, and mental distress.

94. That the aforementioned acts of Defendants were wanton and irresponsible, and warrant an award of exemplary damages.

95. That Defendants knew, or should have known, the damages that would result from the aforementioned publication and posting of notices.

WHEREFORE your Plaintiff prays that this Honorable Court grant judgment for general, special, exemplary and punitive damages against the Defendants, jointly, individually and severally, on the within Count V in the amount of ONE HUNDRED THOUSAND AND NO/100 ($100,000.00) DOLLARS.

COUNT VI - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

96. Plaintiff realleges paragraphs 1 through 95 of Counts I, II, III, IV and V.

97. That the aforementioned acts and conduct of Defendants amount to intentional infliction of emotional distress upon the Plaintiff.

98. That the aforementioned acts and conduct of Defendants were done in a reckless, wanton, intentional and malicious manner of ill will toward the Plaintiff with utter disregard of the rights, feeling or property of the Plaintiff.

99. That the aforementioned acts and conduct of Defendants warrant an award of general, special, exemplary and punitive damages.

WHEREFORE your Plaintiff prays that this Honorable Court grant judgment for general, special, exemplary and punitive damages against the Defendants, jointly, individually and severally, on the within Count VI in the amount of ONE HUNDRED THOUSAND AND NO/100 ($100,000.00) DOLLARS.

COUNARD & KEVELIGHAN

BY /s/ ALLEN J. COUNARD
Attorneys for Plaintiff
17663 West Ten Mile Road
Southfield, Michigan 48075
Telephone: 557-6920

DEMAND FOR TRIAL BY JURY

COMES NOW THE ABOVE PLAINTIFF and respectfully demand Trial by Jury in the above entitled cause.

COUNARD & KEVELIGHAN

BY ALLEN J. COUNARD
Attorneys for Plaintiff
17663 West Ten Mile Road
Southfield, Michigan 48075
Telephone: 557-6920

(End of Defendants' Exhibits "A" and "B")

Filed August 9, 1979 - No. 9-72789
U. S. District Court

MOTION TO DISMISS

The Defendants Metropolitan Savings Association a/k/a METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, James I. MCClintock, Roger C. Richards and John C. Denyer and Co-Defendants McClintock Donovan Carson & Roach, James I. McClintock, Michael Doelle

and William P. Thrope, by their attorneys McClintock Donovan Carson & Roach hereby move this Court pursuant to Rule 12(b) (1) of the Federal Rules of Civil Procedure to dismiss Plaintiff's Complaint for Declaratory Judgment filed herein for lack of jurisdiction over the subject matter on the grounds that the matters stated therein are res judicata in that the subject matter is identical to that previously litigated in the Wayne County Circuit Court being file No. 115-792, as more particularly appears in the Brief in Support of Motion to dismiss filed herewith and the Affidavit of William P. Thrope attached hereto.

WHEREFORE, the Defendants and Co-Defendants pray that this Court dismiss the Plaintiff, Virginia Cramer's Complaint for Declaratory Judgment with prejudice together with an award of reasonable attorney fees and costs in the amount of $1,000.00.

Respectfully submitted
MCCLINTOCK DONOVAN CARSON
& ROACH
BY /s/ WILLIAM P. THORPE
(P21436) Attorneys for
Defendants and Co-Defendants
2150 Guardian Building
Detroit, Michigan 48226
963-3400

Date: August 8, 1979

Filed August 9, 1979 - No. 9-72789
U. S. District Court

BRIEF IN SUPPORT OF MOTION TO DISMISS

FACTS

The Plaintiff Virginia Cramer (hereinafter "Cramer") has litigated the subject

matter underlying her Complaint for Declaratory relief for over ten years in the Wayne County Circuit Court, the Michigan Court of Appeals, Michigan Supreme Court and finally ending with a denial of a Petition for Certiorari issued by the U. S. Supreme Court.

It is important to review the proceedings in the action initiated by Virginia Cramer in Cramer v. Metropolitan Savings Association, et al., filed in the Wayne County Circuit Court on August 12, 1968 being No. 115792. After certain preliminary motions and appeals, Mrs. Cramer was allowed to file a Second Amended Complaint, a copy of which is attached hereto as Exhibit "A". Subsequently, on March 27, 1972, a Summary Judgment was entered dismissing six counts contained in the Second Amended Complaint. The Michigan Court of Appeals upheld the Summary Judgment as to five counts and remanded one count entitled Breach of Fiduciary Duty on May 29, 1973. A Copy of the Opinion is attached hereto as Exhibit "B". The case went to trial on one count and a Judgment was entered on September 21, 1973 reflecting a jury verdict of no cause of action. Cramer again appealed and by Opinion dated June 2, 1975, the Judgment was affirmed. A copy of that Opinion of the Michigan Court of Appeals is attached hereto as Exhibit C.

Cramer then appealed to the Michigan Supreme Court for Leave to Appeal which was granted. The Michigan Supreme Court's Opinion dated October 6, 1977, reported at 401 Mich 252, 258 NW2d 20, affirmed the Court of Appeals, A copy of the Opinion is attached hereto as Exhibit "D".

Cramer then applied to the United States Supreme Court for a Writ of Certiorari which

was denied on June 12, 1978 as reported at 436 US 458, 57 L Ed 2d 1123, 98 S Ct 3072.

On July 14, 1978, Cramer filed a Complaint in the Wayne County Circuit Court being No. 78 822 879 CZ containing the same subject matter as that of the prior litigation. A copy of the Complaint is attached hereto as Exhibit E. The Complaint also named as Co-Defendants McClintock Donovan Carson & Roach, James I. McClintock, Michael Doelle and William P. Thorpe. The individuals and lawfirm represented the Defendants in the initial action.

The Defendants and Co-Defendants filed a Motion for Accelerated and Summary Judgment and the same was granted by Judgment dated September 8, 1978, a copy of which is attached hereto as Exhibit "F". The matter is now pending in the Michigan Supreme Court on an interlocutory appeal. The subject matter of all litigation including the instant case arises out of a mortgage executed by Mrs. Cramer dated July 29, 1963, her subsequent failure to comply with paragraph 2 of the mortgage concerning payment of escrow and the foreclosure action taken by Metropolitan. The matter has been litigated for over ten years.

ARGUMENT

Cramer's Complaint should be dismissed for lack of jurisdiction over the subject matter on the grounds that the subject matter is res judicata and/or collaterally estopped.

It is evident from Cramer's pleadings, the Second Amended Complaint and decision reported at 401 Mich 252 that the underlying controversy is identical. She now

attempts to use the Civil Rights Act, 28 USCA 1983 to relitigate the matter. However, the law is clar that she cannot us that act to relitigate issues decided in state court. In Coogan v Cincinnati Bar Association, 431 F2d 1209 (1970 involving disbarment proceedings, the Court stated at p. 1211:

> The Civil Rights Act was not designed to be used as a substitute for the right of appeal, or to collaterally attack a final judgment of the highest court of a state and relitigate the issues which it decided.
>
> The final judgment of the Supreme Court is conclusive and Coogan is precluded by the doctrine of res judicata from relitigating not only the issues which were actually involved in the disbarment proceeding, but also the issues which he might have presented. Burton, Inc. v Durkee, 162 Ohio St. 433, 438, 123 N.E. 2d 432 (1954)

In P I Enterprises, Inc. v Cataldo, 457 F2d 1012 (1972), the First Circuit Court of Appeals upheld a district court dismissal of a complaint on the grounds of res judicata and collateral estoppel holding that a state supreme court was competent to decide constitutional issues. Citing Coogan, supra and stating at p. 1015

> A complaint under the Civil Rights Act does not provide the springboard for an unhappy state litigant to raise federal claims de novo in federal court.

P I Enterprises, supra, also involved a conspiracy allegation under 42 USCA 1985.

In the companion cases of Fortune v Mulherrin and Cournoyer v Town of Lincoln, 533 F2d 21 (1976), the First Circuit held that a federal court had no jurisdiction to review, respectively, a state court custody proceeding or a decree involving a zoning ordinance under the guise of the Civil Rights Act. In Fortune the Court stated at p. 22:

> Appellant Fortune makes out no case by claiming that the New Hampshire courts applied an unconstitutional standard in awarding custody of his child to its mother. Fortune has been heard in the state court, and the allegation that an unconstitutional result has been reached 'does not vest the (federal courts) with jurisdiction to review the state proceedings' collaterally. Atchley v. Greenhill, (S.D. Tex.), 1974, 373 F Supp 512, cert denied (2/23/76) 424 U.S. 915, 96 S Ct 115, 47 L Ed 2d 320; cf. Angel v Bullington, 1947, 330 U.S. 183, 67 S Ct 657, 91 L Ed 832. His claims for damages are barred by judicial immunity, Pierson v Ray, 1967, 386 U.S. 547, 553-54, 87 S Ct 1213, 1217, 18 L Ed 2d 288, 294 or otherwise lack merit.

It is interesting that the Court in Cournoyer, supra, noted that plaintiff cited no case even plausibly supporting federal jurisdiction and awarded double costs.

For the reasons stated above, Cramer's Complaint should be dismissed with prejudice together with an award of reasonable costs and attorney fees.

Respectfully submitted,
McCLINTOCK DONOVAN CARSON & ROACH, By /s/ WILLIAM P. THORPE (p 21436) Attorneys for Defendants and Co-defendants

Dated:
Aug 8, 1979

Filed September 26, 1979 - No. 9-72789
U. S. District Court

OPPOSITION TO MOTION TO DISMISS
MOTION TO STRIKE SHAM AND FALSE PLEADINGS

Now comes Virginia Cramer, Petitioner and Defendant in wrongful foreclosure action and moves this Honorable court to strike pleadings (Motion to Dismiss) as filed by Attorney William P. Thorpe on behlaf of Defendants Metropolitan Federal Savings and Loan and on behalf of Co-Defendants McClintock Donovan Carson & Roach, and Petitioner Virginia Cramer says as follows:

A. That the "Motion to Dismiss" is sham and false where Defendants and Co-Defendants allege "lack of jurisdiction over the subject matter on the grounds that the matters stated therein are res judicata in that the subject matter is identical to that previously litigated in the Wayne County Circuit Court being file No. 115-792"

B. That the "Motion to Dismiss" is sham and false for the reason that Wayne County Circuit Court file No. 115-792 contains no subject matter and no remote identity to the Petitioner's Complaint filed in the Federal District Court, herein shown as:

Preamble
1. Jurisdiction and venue, Pages 1 thru 5
2. Cause of action and federal intervention Pages 5 through 6
3. Wrongful foreclosure, Slander of Title Pages 6 through 8
4. Actual Controversy - State Action involved, Pages 8 through 10

5. Willful and Malicious Tort, Pages 10 through 11
6. Fraud, Concealment and Deception, Attorney Malpractice (Selburn and Counard) Pages 11 thru 18
7. Fraud, Concealment or Deception, Attorney Malpractice (McClintock Donovan Carson & Roach, Michael Doelle and William P. Thorpe) Pages 18 thru 25
8. Conspirators, Obstructionists of Justice (Selburn, Counard, McFadden) Pages 25 through 27
9. Actual Controversy - Federal Action Involved (Federal Home Loan Bank Board) Page 27 thru 31
10. Injunctive relief against Michigan Supreme Court Justices, Page 31 through 35
11. Measure of Damages, Page 35

C. That the defendants and co-defendants "Motion to Dismiss" is sham and false, for the reason that the prior action Wayne County Circuit Court file No. 115-792, contained as follows:

Count I - Breach of Contract
Count II - Abuse of process
Count III - Libel and slander
Count IV - Breach of Fiduciary Relationship
Count V - Invasion of Privacy
Count VI - Intentional Infliction of Emotional Distress

and that the Michigan Court of Appeals dismissed Counts I, II, III, V, and VI, as pertaining to"wrongful foreclosure" and which said "wrongful foreclosure" was never heard and never allowed to be heard, and where the attorneys (Selburn and Counard) in legal malpractice, negligence and misconduct failed to seek the setting aside of the foreclosure and/or failed and neglected to take issue with the "Order Dissolving Temporary Restraining Order" entered on September 27, 1968, alleging

that "Plaintiff is in default" of her mortgage, due to the misconduct, legal malpractice and fraud perpetrated upon the court by attorneys Michael Doelle and McClintock Donovan Carson & Roach, the attorneys and law firm who instigated and commenced the wrongful foreclosure pursuant to Michigan Foreclosure by Advertisement Statute MCLA 600.3201 et seq.; MSA 27A.3201 et seq., against your Petitioner Virginia Cramer where said Virginia Cramer was never in "default" of the mortgage contract and had never failed to pay "escrow" moneys each and every month as a "condition" of - said mortgage contract, prior to the foreclosure date of May 23, 1968. That the attorneys your Petitioner hired failed and neglected to take issue with the Foreclosure by Advertisement statutory provisions, and failed and neglected to take issue with the terminology "deficiency" as worded in said mortgage contract.

D. That the matter of Petitioner's so-called "default" in her mortgage has never been litigated; -That the Wayne Circuit Court in No. 115-792 (prior action) heard only Count IV, Breach of Fiduciary Duty, and would not allow your Petitioner to be heard on any matter remotely related to "wrongful foreclosure" as pertaining to all other counts of the Complaint prepared and filed by her attorney Allen Counard.

E. That the "foreclosure" matter has never been litigated and Petitioner Virginia Cramer has never been heard and never allowed to be heard on said "foreclosure" matter and which the Defendants and their attorneys, Co-Defendants herein, instituted and instigated under the said Michigan Fore-Closure by Advertisement Statute, MCLA 600. 3201 et seq., MSA 27A.3201 et seq.

F. That the transcript of proceedings on Count IV, Breach of Fiduciary Duty, shows as follows: (Volume II, August 20, 1973)

—

at 407a -- Mrs. Cramer: This case has been in the court of appeals twice. It was first instituted in August of 1968. That is five years ago, and this is the first day that I have had in court to present my side. The very first day. I have waited a long time to be heard."

—

at 409a -- Mr. Thorpe: If she is testifying, the matter of foreclosure has no relevance to this proceeding and I wish it stricken from the record and her instructed not to testify to it.

—

at 410a -- The Court: " * * * The Court has Count IV before it and you will be confined to Count IV."

—

at 431a -- Ms. Cramer: " * * * So Mr. -- Denyer refused to give me an accounting of what they claimed the deficiency was and at the same time upon re-- receipt of a letter which I will produce from the president of Metro where they refused to furnish receipts, I went to the Metro offices personally to see the president (Mr. Richards), Mr. Denyer(and) their controller and I took a friend with me, a lady friend, and I just said that I was very at a loss to understand why I should be paying escrow moneys to them when they were failing to meet my obligations out of my escrow money and that I thought I could handle my money in a much better fashion than in paying the escrow money to handle for me and I asked to pay my own taxes and insurance rather than to pay it in escrow

on deposit as a trust fund with Metro and they didn't answer me; they didn't give me an answer of yes, no or maybe or whatever. They simply foreclosed."

at 432a -- Mr. Thorpe: Objection, your Honor. The foreclosure is not here in issue.

The Court: I will sustain the objection.

* * *

Ms. Cramer: Well, in any event, at the time of the foreclosure there was --

Mr. Thorpe: Objection, your Honor.

Ms. Cramer: There was --

The Court: Sustain the objection. The jury will disregard the statement.

Ms. Cramer: -- in escrow there was a surplus balance in my escrow account of approxmately $200 surplus in my escrow account at the time that they foreclosed.

Mr. Thorpe: Objection, your Honor.

The Court: The jury will disregard --

Ms. Cramer: That indicates the time, your Honor.

The Court: Just tell the time, when it was.

Ms. Cramer: As I recall, your Honor, the foreclosure took place in May --

at 433a -- Mr. Thorpe: Objection.

The Court: We are not interested in the foreclosure.

Ms. Cramer: May 23, 1968.

at 434a -- Ms. Cramer: * * * Also they have allocated in their account an item of $296.30 as attorney fees out of my escrow on the foreclosure --

Mr. Thorpe: Your Honor, objection to the foreclosure --

The Court: The jury will disregard it.

at 438a -- The Court: The Court of Appeals has said the whole issue is Count 4 and that is still open. The Court of Appeals has foreclosed this proceeding on any of the other counts.

at 441a -- Ms. Cramer; "Also here, your Honor, in the deposition the president of Metropolitan has said as to the escrow funds: "Mr. Richards, whose money do you consider that is?"

"That is the borrower's funds."

But that is what they foreclosed on."

The Court: Are you ready to take the stand?

at 448a -- Q. (By Mr. Thorpe) The crux of this lawsuit concerns the handling of certain escrow funds. Did you ever pay out of your own pocket other than into escrow any of the taxes on your house? In other words, did you ever go down to the county treasurer's office or city treasurer and actually pay the taxes yourself?

A. (by Ms. Cramer) Yes.

Q. You did?

A. Yes

Q. Do you have a receipt for it?

A. Yes, I have a cancelled check.

Q. What year was that?

A. That was in 1968.

Q. That was after this mortgage had terminated, wasn't it?

A. After the foreclosure was published.

Mr. Thorpe: Objection to the word "foreclosure."

Ms. Cramer: After the foreclosure was published. In other words, after May 23, 1968. That was the date of the foreclosure and that is how I associate my paying my taxes directly to the city treasurer in Dearborn Heights where this piece of property is located.

Q. Did you ever go down and pay them before that?

A. No, because I never got the tax bills and you can't pay taxes unless you get the tax bills and Metropolitan nor the city treasurer would furnish me with the tax bills.

at 455a -- Ms. Cramer: I had gone to Dearborn Heights City Treasurer's

office who have the authority to send the bills out. I had paid the taxes in the amount of $101.33 that were due in July of 1968 after Metropolitan had taken legal proceedings to repossess my home --

Mr. Thorpe: Objection, your Honor.

The Court: I will instruct the jury to disregard that statement. You can speak of times as far as dates are concerned.

Ms. Cramer: May 23, 1968 Metropolitan Federal took legal action against me --

Mr. Thorpe: Objection, your Honor.

The Court: You can state the date. We don't have to talk about legal action.
* * *

Ms. Cramer: I associated the date of May 23 --

The Court: You may mention that.

Ms. Cramer: May 23, 1968. What relevancy does it have unless I clarify it to the Court?

The Court: You can use the date if you want.

G. Thus, the court can see that the "foreclosure matter" has never been heard and never allowed to be heard.

H. That your Petitioner has been systematically and continuously denied the opportunity to be heard on said "foreclosure" and she has been denied due process of law by the denial of a day in court on said "fore closure" matter, in violation of the Fourteenth Amendment to the United States Constitution.

I. That the Defendants-Metropolitan by their attorneys have assumed the position that state action or exertion of power is not involved in the foreclosure by Advertisement Statute, MCLA 600.3201 et seq.; MSA 27A.3201 et seq., and yet the Defendants-Metropolitan utilized the Michigan Foreclosure by Advertisement statute to foreclose on the mortgagor's own moneys (for escrow) for their own self-dealing, in an excessive amount, and where there were no taxes due, no insurance due, none billed, none assessed and none unpaid; and further, there was no "deficiency" in escrow and instead there was a surplus credit balance in the mortagor's (Virginia Cramer) account.

J. The matter of the "foreclosure" has never been litigated and your Petitioner has never been heard and has never had a day in court to be heard in the State courts.

K. That attorney Mr. William P. Thorpe (P21436) as attorney for Defendants (Metropolitan) and Co-Defendants (members of McClintock Donovan Carson & Roach,) continues incessantly to misrepresent, mislead and falsify matters to the court and he continues to perpetrate fraud upon the court.

L. Where the court will examine Mr. Thorpe's pleadings, the court will find that Mr. Thorpe shows no skills in the law and the totally irrelevant cases he cites is an unreasonable burden on the court and upon your Petitioner, where Mr. Thorpe misrepresents the law, and where Mr. Thorpe misrepresents the facts to the court; there is no question that Mr. Thorpe's pleadings should be stricken from the records and the court should refuse to consider Mr. Thorpe's pleadings.

M. That Mr. Thorpe's pleadings only give out a powerful, obnoxious odor of mendacity filled with prevarications, misrepresentations and downright false facts and omissions of the facts.

N. That Mr. Thorpe's pleadings of misrepresentations and false facts and omissions of facts, procedurally and otherwise, have been a constant occurrence in the State courts, and which occurred also in his "Brief for Respondent in Opposition" in the Supreme Court of the United States, where Mr. Thorpe falsely states as follows:

Page 3 = "On August 16, 23, 30, and September 6, 1968, hearings were held in the Wayne County Circuit Court on the temporary restraining order * * * "

There was only one hearing and that was on September 6, 1968, and on those other dates there were no hearings and no record and no transcripts made because the Wayne Circuit Court judge (Murphy, now deceased) only helled at your Petitioner to hire a lawyer, and then when Petitioner hired Mr. Selburn there was only the "proceedings" on September 6, 1968, where mortgagor-Virginia Cramer was not allowed to be heard, and she was denied the opportunity to be heard, and which resulted in the "Order Dissolving Temporary Restraining Order" dated September 27, 1968, which the Michigan Supreme Court has falsely stated to be as "The Wayne Circuit Court, Thomas J. Murphy, J., granted judgment for the defendants on a finding that the plaintiff was in default." There were no findings of fact. The plaintiff-mortgagor-Virginia Cramer was not allowed to be heard. The "Order Dissolving Temporary Restraining Order" was not a "judgment" and there was no "default" shown. (see 401 Mich 252) Further, the Michigan Court of Appeals in Cramer v Metropolitan, et al,

said "Mrs. Cramer's evidence was not heard." as reported at 34 Mich App 638, dated July 22, 1971. (emphasis added).

O. Further, Mr. Thorpe's fraud and deceit is shown in his "Brief for Respondent in Opposition" (among many other instances) in the Supreme Court of the United States, as follows:

Page 3 (at bottom) "Subsequently, during the numerous proceedings below, the trial courts determined that Mrs. Cramer had defaulted under the terms and conditions of the mortgage, that Metropolitan as mortgagee was entitled to commence foreclosure of the mortgage pursuant to the power of sale and that Metropolitan had complied with the Michigan statute governing nonjudicial foreclosures of real property." This statement by Mr. Thorpe is utterly false and for the reason that:

1. There was no default by the mortgagor; the defendants Metropolitan have never shown any default to allow such foreclosure.

2. There was no "deficiency" in mortgagor's "escrow" account; there was, instead, an "escrow" surplus credit balance, at the time of the foreclosure.

3. No "deficiency" was claimed in the mortgagee's Bidding Statement to the Sheriff (Wayne County), as to "escrow".

4. That the "escrow" surplus balance in mortgagor's "escrow" account was applied as a reduction of the principal balance in the Bidding Statement to the Sheriff as prepared by Metropolitan or their attorneys, dated October 1, 1968, and where Metropolitan withheld $30.10 of mortgagor's "escrow" funds which was received by Mortgage Guaranty Insurance Corporation (MGIC) in December, 1968,

considerably after the Sheriff's sale of October 1, 1968.

P. That Mr. Thorpe's only skill in this entire matter is to misrepresent and to perpetrate fraud upon the court, which he is very adept at doing, by his fraud and deceit.

WHEREFORE Petitioner Virginia Cramer prays that this Honorable court will strike the pleadings filed by Mr. William P. Thorpe, pursuant to Rule 11 and 12 on the grounds that said pleadings are a complete sham and false, and that this court exercise its discretionary powers under local court Rule VI (4), as follows:

Rule VI. Discipline of Attorneys.

(a) The Chief Judge shall have charge of all matters relating to the discipline of members of the Bar.

(b) The Court may make an order in a disciplinary proceedings disbarring, suspending or censuring, or taking such other action as justice may require, with respect to a member of the Bar of this Court, or an attorney admitted under Rule V (d) hereof:

* * *

(4) who is guilty of conduct unbecoming a member of the Bar of this Court. Such conduct shall be deemed to consist of fraud, deceit, malpractice, or violation of the Canons of Eithics of the American Bar Association or of the Michigan State Bar Association.

* * *

(d) Cases within subdivision (4) of paragraph (b) shall be presented to the Chief Judge, and if he deems the charges of professional misconduct

of sufficient weight, he shall refer them for preliminary investigation and recommendation to the Michigan State Bar Association and, in his discretion, to the United States Attorney. The recommendation shall be presented to the Chief Judge.

Dated:
September 20, 1979

/s/ VIRGINIA CRAMER
Petitioner in pro per
Defendant in wrongful foreclosure

OPPOSITION TO MOTION TO DISMISS

Petitioner (defendant in wrongful foreclosure) opposes the Defendants (Metropolitan) and Co-Defendants (attorneys for Metropolitan) motion to dismiss for "lack of jurisdiction over the subject matter" and as more fully opposed and objected to by your Petitioner in her "Motion to Strike Sham and False Pleadings of Defendants and Co-Defendants by William P. Thorpe" submitted and attached hereto, and incorporated herein by reference, and Petitioner (defendant in foreclosure) says:

1. (a) That the said Defendants and Co-Defendants have consistently claimed that they "are bound by (Federal) regulations (promulgated by the Federal Home Loan Bank Board) pursuant to 28 USCA 1461, 1464 et seq. to require and maintain "escrow" funds payable by mortgagors for the prepayment of taxes, insurance and other assessments that may become due on the real property mortgaged."

(b) That the said Defendants and Co-Defendants also have consistently claimed that there is no law requiring the mortgagee (lending institution) to pay taxes

and insurance with the "escrow" funds so collected, and that the failure of the mortgagee to utilize said "escrow" funds belonging to the mortgagor for payment of taxes and/or insurance is not a violation of any law.

(c) That the mortgage contract (a mass contract) requires the mortgagor to pay "escrow" funds to the mortgagee, otherwise the mortgage loan is not available.

(d) That the mortgagee (lending institution) utilized the Michigan Foreclosure by Advertisement Statute, MCLA 600.3201 et seq., MSA 27A.3201 et seq. to foreclose on excessive amounts for the "escrow" account while there was an "escrow" surplus credit balance in mortgagor's "escrow" account; there was no deficiency at the time of the foreclosure; the mortgagee had failed consistently to pay the mortgagor's obligations for taxes and insurance timely, and while the said mortgagee utilized said "escrow" for self-dealing purposes and investing the "escrow" for profit which they admit.

(e) That the mortgagee foreclosed the mortgage loan on said excessive "escrow" amount, without notice, without prior demand, when there were no taxes due, no insurance due, no other assessments due, none were assessed, none were billed and none were unpaid; and foreclosed during the 15-day forebearance or waiver period of the mortgage note and refused to accept any moneys from the mortgagor after said foreclosure publication date of May 23, 1968.

2. That Petitioner's payment record on said mortgage loan eas exemplary, and that she never failed to pay "escrow" each and every month, and which the Defendants (Metropolitan) credited her "escrow" account with payments each and every month without fail for the entire period of the mortgage up to and including May 14, 1968, and foreclosed the mortgage loan on/or about May 16, 1968, when Petitioner's May 15, 1968 payment was not paid on said date of May 15, 1968, and during the period when your Petitioner was disputing the "excessive" requirements by said mortgagee (Metropolitan) and during the 15-day forebearance or waiver period of the mortgage note, with the first publication dated May 23, 1968.

3. That these matters were never litigated in the State courts, as above-whoen and there is no record of any testimony in the State courts relative to the matters herein, and as to those Counts contained in the Complaint for Declaratory Judgment, incorporated by reference herein; that the Defendants (Metropolitan) and their attorneys (Co-Defendants herein) have never offered any testimony in the State courts relative to the matters shown in Petitioner's Preamble and Complaint for Declaratory Judgment; and that the said Co-Defendants (attorneys for Metropolitan) and the State courts have prevented, precluded, prohibited and inhibited your Petitioner from having a day in court to testify as to the matters in Petitioner's Preamble and Complaint relating to the said "foreclosure" matter. Therefore, the matter is not res judicata for the reason that your Petitioner has never been heard and never allowed to be heard, to date, as to the "foreclosure."

4. That the Defendants (Metropolitan) and their attorneys, Co-Defendants herein,

have never submitted any Exhibits, any accountings of the foreclosure figures, nor any testimony in support of the said-foreclosure, in the State court "proceedings."

5. The subject matter of "foreclosure" has never been litigated in the State courts, and that the matter ests in the State courts pertaining only to the Michigan Foreclosure by Advertisement Statute, MCLA 600.3201 et seq.; MSA 27A.3201 et seq., as a non-judicial foreclosure.

6. That your Petitioner is the Defendant in the non-judicial foreclosure, for the reason that the mortgagee (Metropolitan) and their attorneys, McClintock Donovan Carson and Roach, (formerly known as McClintock Fulton Donovan & Waterman) initiated and instigated the "wrongful foreclosure" under the provisions of MCLA 600.3201 et seq.; MSA 27A.3201 et seq.

7. That the attorneys for said mortgagee (Metropolitan) held their pleading by their "Brief for Respondent in Opposition" in the Supreme Court of the United States to said non-judicial foreclosure and the power of sale contained in the mortgage, and on page 7, of said Respondent's Brief, it shows:

> "The option to foreclosure non-judicially is a contract remedy long recognized in Michigan and the courts have recognized the parties' prerogative to so provide."

8. That your Petitioner (defendant in wrongful foreclosure) was never in "default" of said mortgage contract and mortgagee (lending institution) foreclosed on moneys for "escrow" which were not an indebtedness and not a debt, without prior notice, and

during the forebearance or waiver period of the mortgage note. These matters have never been litigated in the State courts at any level.

9. That the subject matter is not "res judicata" and not collaterally estopped, and that the denial of certiorari (in the Supreme Court of the United States) makes no precedent and imports no expression of opinion on the merits of case.

10. Further, since attorney William P. Thorpe relies on res judicata (erroneously) and/or collateral estoppel (erroneously) where by he contradicts himself by relying on the denial of certiorari (in the Supreme Court of the United States) see his "Brief for Respondent in Opposition" dated May 22, 1978, where he states therein, as follows:

Page 6 - "MATTERS NOT RAISED IN THE PROCEEDINGS BELOW NOT GROUNDS FOR GRANTING CERTIORARI

> Mrs. Cramer, in her Petition, for the first time in the lengthy proceedings underlying this matter, has alleged violation of the anti-trust, civil rights laws, and other possible theories not specifically enumerated. Such claims have not been duly raised below and should not be raised on certiorari."

11. The denial of certiorari (in the Supreme Court of the United States) imports no expression of "res judicata" and imports no collateral estoppel of the matters asserted in your Petitoner's Preamble and Complaint for Declaratory Judgment and the relief sought, for the reasons that said matters have never been heard and never allowed to be heard. (State Bar of Michi-

gan v. Brotherhood of R. R. Trainmen, 1970, 174 NW2d 811, 383 Mich 201, revd. 91 S. Ct. 1076, 401 U. S. 576, 28 L Ed 2d 339.)

WHEREFORE your Petitioner (defendant in wrongful foreclosure) prays that this Honorable court will deny the Defendants (Metropolitan, et al) and Co-Defendants (attorneys for Metropolitan) motion to dismiss and deny attorney fees and costs.

Respectfully submitted,

/s/ Virginia Cramer, Petitioner in pro per, Defendant in wrongful foreclosure

Dated:
Sept. 20, 1979

BRIEF IN SUPPORT OF MOTION TO STRIKE ~~SHAM~~ AND FALSE PLEADINGS (OF DEFENDANTS AND CO-DEFENDANTS BY WILLIAM P. THORPE)

AND IN OPPOSITION TO MOTION TO DISMISS

Petitioner-Cramer (defndant in wrongful foreclosure action) does not accept Co-Defendant-Attorney-Thorpe's "facts" for the reason that attorney-Thorpe is misrepresenting and omitting matters, and which the Court should be apprised and fully informed of.

FACTS

The subject matter underlying Petitioner-Cramer's Complaint for Declaratory Judgment is that where Petitioner-mortgagor had an exemplary payment record on her mortgage loan with Metropolitan Federal Savings and Loan Association, and Petitoner-mortgagor never failed to pay "escrow" funds and that she regularly and conscientiously made payments to the mortgagee (Metropolitan) each and every month, without fail, of principal,

interest and "escrow" according to the monthly-installment "payment cards" which Metropolitan furnished to her, said Metropolitan-mortgagee foreclosed the mortgage loan (pursuant to the Michigan Foreclosure by Advertisement, MCLA 600.3201 et seq.; MSA 27A.3201-et seq.) for the reason that mortgagor-Cramer complained to said mortgagee (Metropolitan) that:

1. Excessive amounts of "escrow" were being required and inconsistent with the terms and conditions of the mortgage covenant and agreement

2. The mortgagee (Metropolitan) failed to furnish proper statements of account and/or omitted and neglected to furnish statements of account.

3. The mortgagee (Metropolitan) failed and neglected to furnish receipts or copies of receipts showing what amounts and to whom the Mortgagor's "escrow" moneys were being paid, if any.

4. The mortgagee (Metropolitan) failed and neglected to pay mortgagor-Cramer's taxes and insurance timely, and allowed said liabilities to become seriously delinquent, and jeopardizing mortgagor's security.

5. Mortgagor-Cramer never was furnished with any tax bills or insurance bills, and she never saw any such bills during the entire period of the mortgage-loan for more than 56 months, prior to the foreclosure.

6. When mortgagor-Cramer asked to be permitted to pay her own liabilities of taxes and insurance, said mortgagee (Metropolitan) yelled and screamed at her to "hire a bookkeeper and a .

lawyer" and without any prior notice or demand, the said mortgagee (Metropolitan) initiated foreclosure by advertisement, and thenceforth, refused to accept any moneys from Mortgagor-Cramer "on account of the foreclosure."

On August 12, 1968, by her own self-help means Cramer filed a Complaint (Wayne No. - 115-792) and obtained a temporary restraining order with an order to show cause why a preliminary enjoining order should not be granted. On August 16, 1968 (the date set for the show cause hearing) Judge Thomas J. Murphy would not allow Cramer to proceed in pro per and yelled at her to "hire a lawyer". Cramer hired attorney Abel Selburn and on/or about August 20, 1968, for him to appear before Judge Murphy on the adjourned hearing date of August 23, 1968, where the matter was again adjourned and Judge Murphy instructed Attorney-Abel Selburn to "audit" Metropolitan's books.- The so-called "audit" consisted of Metropolitan (by John C. Denyer) furnishing - attorney-Selburn with an adding-machine-tape of unexplained figures. No records were produced and attorney-Selburn made no-request for any records. The next adjourned hearing date (on the Order to Show Cause) was on September 6, 1968, where no exhibits and no records were presented, only John C. Denyer was permitted to testify, and the sixteen (16) page transcript consisted of colloquy between two (2) lawyers and the judge, with a scrambling (orally) over some figures, which were inaccurate, and without any exhibits and/or evidence, Judge Murphy told the Mortgagee (Metropolitan) to "go ahead with the foreclosure." Mortgagor-Cramer was not permitted to testify, and Judge Murphy would not permit Cramer to present her "figures," as to the mortgage-loan. No other hearings were held. On

September 23, 1968, attorney-Michael Doelle (for Metropolitan) apparently prepared the "Order Dissolving Temporary Restraining Order" (which purports Cramer to be "in default" of her mortgage) and where there was never any testimony as to any "default", and said Order was entered on September 27, 1968, and no proof of service was ever filed. Cramer never saw the said "Order" dated September 27, 1968, until she looked into the Court file in about March or April of 1970, when she found out that attorney-Selburn had been deceiving her and claiming that he had filed pleadings in the said case, when, actually attorney-Selburn had filed no pleadings, absolutely none whatsoever. (Judge Murphy was deceased in December, 1969.)

Then, Cramer in pro per attempted to motion the court (before Judge Bell) for leave to file an amended complaint, and she was treated with unbelievable hostility by said Judge. Cramer then hired attorney-Allen Counard in about April or May of 1970. Cramer has never had a day in Court to prove that the mortgagee-Metropolitan had no basis for the foreclosure, and that:

a. Cramer was not in "default" of the mortgage.

b. There was no deficiency in the "escrow" account and there was, instead, an "escrow" credit surplus balance (which Metropolitan utilized after the foreclosure-sale date) and that the Sheriff's Bidding Statement showed an "escrow" credit balance which the mortgagee-Metropolitan applied in reduction of the principal balance.

c. That Cramer had an exemplary payment record and was considerably ahead in her payments, and where Metropolitan had sole control of the allocation

of payments as to principal, interest and "escrow".

d. Cramer could not rely on Metropolitan's bookkeeping for the reason that the annual statements were either not itemized and showed only "ending balances" or said statements were with errors or incomplete, and their correspondence usually had errors in the figures, and/or the statements were omitted -- this occurred during the 56 months, prior to foreclosure.

Cramer hired attorney-Allen Counard in April or May of 1970, who took the matter of filing an amended complaint (denied by Judge Bell) on appeal, and where the Michigan Court of Appeals, reported at 34 Mich App 638, where that court said:

"A circuit judge (not the judge who had heard the matter in 1968) entered an order denying Mrs. Cramer's request to file an amended complaint and denying her demand for jury trial; and subsequently he entered a summary judgment dismissing her complaint on the ground that the 1968 finding that she was in default made at the time the temporary restraining order was dissolved was res judicata. Mrs. Cramer appealed. We reverse and remand for further proceedings. (emphasis added)

"The summary 1968 hearing on the order to show cause was not a trial hearing. The transcript, 16 pages in length, is largely colloquy between the lawyers and the judge. One witness for Metropolitan was sworn and gave testimony. Mrs. Cramer's evidence was not heard. (emphasis added)

However, attorney-William P. Thorpe (for

Metropolitan) has repeatedly and consistently claimed the matter to be 'res judicata" because of the "Order Dissolving Temporary Restraining Order" entered on September 27,- 1968, by Judge Thomas J. Murphy, as a "finding that the plaintiff was in default" and as shown in the Michigan Supreme Court decision reported at 401 Mich 252, in the heading, as follows: "The Wayne Circuit - Court, Thomas J. Murphy, J., granted judgment for the defendants on a finding that the plaintiff was in default." --- and which is contrary to the Michigan Court of Appeals reversal and remanding, as shown above.

In any event, the point is: that Cramer has never been heard and never allowed to be heard, with or without a lawyer. And attorney-William P. Thorpe consistently claims "res judicata," and as pertaining to the said "Order" entered on September 27, 1968, on which date Abel Selburn (Cramer's attorney, then) did not show up for the hearing on said date of September 27, 1968, and Cramer knew nothing about it at that time.

The two (2) opinions of the Michigan Court of Appeals, dated May 29, 1973 and June 2, 1975, both, were unpublished.

The Michigan Supreme Court decision dated October 6, 1977, reported at 401 Mich 252, 258 NW2d 20, speaks for itself, and is a disaster and requires reformation.

On June 12, 1978, the Supreme Court of - the United States denied Petitioner's application for Writ of Certiorari (a copy of same has been furnished to the Federal District Court, the Honorable Robert E. DeMascio).

Cramer filed this new action on July 14, 1978, in the Wayne County Circuit Court, No. 78-822-879 CZ, and alleging fraud, concealment and/or deception (as to the prior action reported at 401 Mich 252) and that fraud has been perpetrated upon the court and upon Petitioner-Cramer and where Petitioner-Cramer is the injured party, and the subject matter is separate and independent of the prior action, contrary to attorney-Thorpe's statements. The matter is now pending in the Michigan Supreme Court, but not as an interlocutory Appeal for the reason that Defendant-Counard's attorneys claim that Petitioner-Cramer waived her appeal rights as to the "Order Setting Aside Default of Attorney-Allen Counard" and said so-called waiver of appeal rights was supposedly effective upon the court ordering $50.00 costs to be paid to Cramer. Therefore, the "Order" with costs becomes a final order and appealable as of right, and it is not an interlocutory matter. (dated Sept. 7, 1978.)

The Accelerated and/or Summary Judgment entered on September 8, 1978 is strictly because of the alleged fraud perpetrated upon the court (as pertaining to the prior action and reported at 401 Mich 252).

—

Attorney-Thorpe's allegations of "her subsequent failure to comply with paragraph 2 of the mortgage concerning payment of "escrow" is false and a sham, and the court should strike it from the records.

—

Metropolitan-mortgagee and their attorneys have never presented any figures for the court record, and Defendant-attorney-Thorpe has never disputed Petitioner-Cramer's figures.

Attorney-defendant-Thorpe's claims that mortgagor-Cramer "failed to comply with paragraph 2 of the mortgage covenant" as to "escrow" is a false statement, a fraud, a misrepresentation, deceitful, prevarication, and fraud perpetrated upon the court, and which is the reason that Mr. Thorpe has never presented or produced anything for the court record as to payments made by Cramer.

ARGUMENT

Cramer's Petitioner for Writ of Ceriorari was denied by the United States Supreme Court for the reason that fraud is alleged. The said Petition speaks for itself. (not bad for a layperson who flunked kindergarten, was it?) The subject matter is not "res judicata" and Mrs. Cramer's evidence was not heard. Cramer vs Metropolitan Federal Savings and Loan, et al, 34 Mich App 638.

Cramer is not collaterally estopped, and the "denial of certiorari makes no precedent and imports no expression of opinion on the merits of case." State Bar of Michigan v Brotherhood of R. R. Trainmen, 1970, 174 NW 2d 811, 383 Mich 201, revd. 91 S Ct. 1076, 401 US 576, 28 LEd 2d 339.

A Motion to dismiss is not a responsive pleading. Further, Defendant-attorney-Thorpe representing Metropolitan Savings and Loan, et al and Co-Defendants McClintock Donovan Carson & Roach, et al, filed no answer to Petitioner's complaint, and therefore, said defendants and co-defendants failed to plead or defend. Co-Defendant-Attorney-Thrope's motion to dismiss and objection to petition for removal of cause

should be denied.

Respectfully submitted,

/s/ VIRGINIA CRAMER
Petitioner in pro per
Defendant in wrongful foreclosure

Dated:
Sept 20, 1979

Filed September 26, 1979 - No. 9-72 789
U. S. District Court

OPPOSITION TO OBJECTION TO PETITION FOR REMOVAL OF CAUSE TO THE UNITED STATES DISTRICT COURT

OPPOSITION TO MOTION FOR REMAND TO STATE COURT

Petitioner Virginia Cramer, in pro per, Defendant in wrongful foreclosure by advertisement, in opposition to Defendants' and Co-Defendants' (Metropolitan, et al and McClintock Donovan Carson & Roach et al) objections to removal of cause and motion for remand to state court, says as follows:

1. Answering paragraph 1, Petitioner-Cramer is the Defendant mortgagor in the wrongful foreclosure by advertisement-initiated and instigated by mortgagee-Metropolitan Federal Savings and Loan, et al, and their attorneys named-in the above-captioned matter, McClintock Donovan Carson & Roach, et al, pursuant to MCLA 600.3201 et seq.; MSA 27A.3201 et seq. and the said prior action (ultimately reported at 401 Mich 252 (1977) rests in that status under the said Foreclosure by Advertisement statute; therefore, Petitioner-Cramer is and has been defending herself against the

wrongful foreclosure initiated by said mortgagee-Metropolitan. The Michigan State Courts at every level have denied your Petitioner-Defendant in wrongful foreclosure the right and/or opportunity to be heard and have denied your Petitioner a day in court on said foreclosure matter, as more fully shown in the decision reported at 401 Mich 252.

2. As Defendant in a wrongful foreclosure action, and by procedural quirk, Petitioner's position as "Plaintiff" is merely an illusion, and therefore, Petitioner is entitled to removal pursuant to 28 USCA 1441, et seq., as a mortgagor-Defendant.

3. Answering to mortgagee-Metropolitan's paragraph 3, as to their attorney's objections and their motion to remand, and who are the same firm of attorneys who instigated and initiated the foreclosure action by advertisement, instead of by a due process hearing, Petitioner also bases her opposition upon the files and records of the State Court cause, where it is evident that Petitioner-Defendant in wrongful foreclosure action has been denied a day in the State courts, and denied an opportunity to be heard in said State courts, in violation of the Fourteenth Amendment to the United States Constitution.

WHEREFORE Petitioner-Defendant in wrongful foreclosure action (Cramer) prays that this Honorable court deny the motion to remand and deny costs and attorney fees in the amount of $1,000.00.

/s/ Virginia Cramer
Petitioner-Defendant in
wrongful foreclosure,
in pro per

Dated:
Sept 20, 1979

BRIEF IN SUPPORT OF OPPOSITION TO OBJECTIONS TO PETITION FOR REMOVAL OF CAUSE TO THE UNITED STATES DISTRICT COURT and

BRIEF IN SUPPORT OF OPPOSITION TO MOTION FOR REMAND

Petitioner (Cramer) is the Defendant-mortgagor in a wrongful foreclosure action, in a State court action, and 28 USC 1441 et seq. provides for a procedure whereby a defendant may remove the same (ex parte) to the federal courts. Together with her removal petition, Cramer deposited a bond pursuant to 28 USC 1446 (d), on July 17, 1979.

In the prior action reported at 401 Mich 252, Cramer vs. Metropolitan Federal Savings and Loan, it is obvious that the State court denied your Petitioner-Cramer a day in court, and that decision (October 6, 1977) rests on the application of the Foreclosure by Advertisement statutory provisions of MCLA 600. 3201 et seq; MSA 27A.3201 et seq. and as initiated by the mortgagee-Metropolitan Federal Savings and Loan, instead of by a due process hearing.

Further, under Michigan case law, a defendant-mortgagor cannot be heard unless the said foreclosure sale is set aside. Stewart v Eaton, 287 Mich 466 (1939). However, the laws of the State do not bind the federal courts, and in Bronson v Kinzie et al, 1 How (US) 311, 11 L Ed 143, the court said,

> "The laws of a state, regulating the process of its courts, and prescribing the manner in which it shall be executed, of course, do not bind the courts of the United States whose proceedings must be governed by the acts of Congress. * * * And, although such state laws may have

been so adopted, yet they are inoperative and of no force, if in conflict with the Constitution or an act of Congress. * * * Whatever belongs merely to the remedy may be altered according to the will of the state, provided the alteration does not impair the obligation of the contract. * * * But it is manifest that the obligation of the contract, and the rights of a party under it, may, in effect, be destroyed by denying a remedy altogether; or may be seriously impaired by burdening the proceedings with new conditions and restrictions, so as to make the remedy hardly worth pursuing."
at 316, 317.
(emphasis added)

Thus, Petitioner-Cramer has never had a day in court on said foreclosure matter. Petitioner-Cramer's rights to the equal protection of the law and rights to due process of law have been ruthlessly violated, in violation of the Fourteenth Amendment to the United States Constitution. The Fourteenth Amendment is a limitation on state action, but is not a limitation on private action.

> "Removal is effected entirely by ex parte procedure * * * ."
> Milton A. Jacobs, Inc. v Manning Mfg.Corp. D.C.N.Y. 159, 171 F Supp 393

> "Removal of case from state court to federal court cannot be fraudulently evaded."
> Romick v Bekins Van & Storage Co., C.A. Tex. 1952, 197 F 2d 369

So far as your Petitioner can understand it, the State courts and the attorneys for mortgagee-Metropolitan deem this foreclosure matter as non-judicial. Petitioner-mortgagor-defendant in wrongful foreclosure has been systematically and continuously denied the right and/or opportunity to be heard.

Jurisdiction of the state action is currently pending in the Michigan Supreme Court on the new action which your Petitioner-Defendant in wrongful foreclosure commenced on July 14, 1978, and Reconsideration of Motion for Leave to Appeal was denied on May 3, 1979, but another two (2) motions are still pending in said Michigan Supreme Court.

> "To render an action removable to a federal court, it is necessary that it could have been originally brought in the federal court."
> Metcalf v Watertown, Wis. 1888, 9 S Ct. 173, 128 US 586, 32 L Ed 543.

> "The potentiality of originality is a "condition precedent" to removability of an action from state to federal court."
> In re Commercial Nat. Bank, D.C. Pa. 1942, 45 F Supp 482, affirmed 134 F2d 172

The originality of the instant action is shown as follows:

(a) There is no other case law to support a foreclosure on "escrow" funds for future taxes and insurance, not yet billed, not yet assessed, and where no taxes and insurance were due and none unpaid, and where the defendant-mortgagor was not in default of the mortgage contract where she had never failed to pay "escrow" and she was considerably ahead in her payments. (except 401 Mich 252.)

(b) There is no other case law to support a foreclosure where the mortgagee-lending institution collected said "escrow" funds from the mortgagor purportedly for the timely payment of taxes and insurance, and then, when mortgagor complained about the

excessive amounts being required (contrary to the terms and conditions of the mortgage covenant) and the said mortgagor complained that the mortgagee was failing to pay the taxes and insurance when due, and instead allowing the taxes and insurance to become seriously delinquent, and

(c) the mortgagee-lending institution yelled "What the hell do you care when we pay the taxes?" and when mortgagor-Cramer asked to be permitted to pay her own liabilities of taxes and insurance (instead of by "escrow" funds for mishandling by the mortgagee),

(d) the said mortgagee-lending institution foreclosed by advertisement, when mortgagor was not in default; the State court denied an injunction; the State Court would not permit the mortgagor to be heard and said "go ahead with the foreclosure."

A Sheriff's sale was held on October 1, 1968, without notice, and where the mortgagee sold the property to themselves. Mortgagor redeemed the property on June 5, 1969, and has suffered considerable damages, and where mortgagor maintained an exemplary payment record all during the entire 56 months of the mortgage period; and no prior notice or demand made by the mortgagee prior to the commencement of foreclosure by advertisement by publication.

In Gibson et al v First Federal Savings and Loan Association, 347 F Supp 560, 562, in speaking of redress to any deprivation of civil rights under color of state law, where state process is used to foreclose mortgages

where state action is involved, that court said: (Judge John Feikens)

> "Judicial or executive action, combined with private action, has been held sufficient to find action under color of state law, Shelley v Kraemer, 334 US 1, 68 S Ct 836, 92 L Ed 1161 (1948). But not so here, for the nexus between the state action -- possible foreclosure and execution of sale by the sheriff and the alleged taking by the defendant-- is too remote. To hold that the taking is under color of law would subject every contract or mortgage to constitutional scrutiny. Although the mortgage in question may present legal questions under federal law, enforcement of that contract by the sheriff does not transform an illegal contract into an unconstitutional one." (emphasis added)

The above cited case did not involve a foreclosure. The instant action does involve a foreclosure by advertisement, commonly referred to as a non-judicial foreclosure, under statutory provisions of MCLA 600.3201 et seq.; MSA 27A.3201 et seq, and involving a foreclosure solely on "escrow" funds, not the debt and not the indebtedness. (The above cited case also involved "escrow" Funds, but no foreclosure.)

In Charles McAllister et al., Respts., v Louis C. Drapeau, Impleaded, etc., Appt. (1939) 92 P2d 911, 125 ALR 800, 808, on the question of relief from an illegal contract, the California Supreme Court, In Banc, held:

"Assuming that a contract is fraudulent, or against public policy, or illegal, still, where the parties to it are not in pari delicto, and where public policy is considered as advanced by allowing either, or at least the most excusable of the two, to sue for relief, relief may be given to him, either against the transaction by setting it aside and restoring him to his original position, or even, in some cases, by enforcing the contract, if executory." Citing, Smith v Bach, 183 Cal 259, 191 P 14; Woodham v Allen, 130 Cal 194, 62 P 398; Daniels v Tearney, 102 US 415, 26 L Ed 187

In the instant matter, the contract is selected and printed as a mass contract and is the only contract offered for a sale of credit or extension of credit, on a mortgage-loan, and further, the mortgagee-Metropolitan and their attorneys have consistently claimed that they are bound to do nothing with said "escrow" funds which are the borrower's or mortgagor's funds.

The above shows that Petitioner-Cramer has good standing for removal and there are many and various jurisdictional areas and grounds (under the U. S. Constitution) therefor, and that this Honorable court should liberally construe Petitioner-Cramer's pro se pleadings, and that removal is proper.

For the reasons stated above, remand should be denied.

Respectfully submitted,
/s/ Virginia Cramer, Petitioner
Defendant in wrongful foreclosure, In Pro Per

Dated:
Sept. 20, 1979

Filed August 8, 1979 - No. 9-72789
U. S. District Court

MOTION FOR REMAND OF ABOVE-CAPTIONED ACTION and MOTION TO EXERCISE DISCRETION IN FAVOR OF ABSTENTION AND DISMISSAL OF DECLARATORY COMPLAINT

Now comes Defendant Allen Counard, by and through undersigned counsel, and moves this Court to remand the above-captioned cause to the Michigan Supreme Court and the Wayne County Circuit Court, and to dismiss the above-captioned action pursuant to an exercise of discretion of this Court under the abstention doctrine, for the following reasons;

1. That the above-captioned action is presently pending in the Michigan Supreme Court and before the Wayne County Circuit Court, and has not as yet been concluded;

2. That the above-captioned action has been pending for several years, and is well beyond the thirty (30) days required for removal pursuant to 28 USC 144, 1446 and therefore is untimely on the one hand and is not based upon the federal question, original jurisdiction statute 28 USC 1331, and in fact is a frivolous attempt to utilize the provisions of 42 USC 1983 and 28 USC 1343;

3. That Plaintiff claims a deprivation of due process of law and equal protection of law pursuant to the decision of the Michigan Supreme Court in Cramer v Metropolitan Savings & Loan Association, 401 Mich 252 (1977), which decision was decided by the Michigan Supreme Court on October 6, 1977, thereby making removal of this case completely untimely under 28 USC 1446;

4. That subsequent to the decision of Cramer v Metropolitan Savings & Loan Association, Plaintiff added attorney Allen Counard, represented by undersigned counsel, as an additional Defendant, on the grounds that this attorney allegedly committed malpractice in the handling of her claim;

5. That no claim against Allen Counard at any time has ever been advanced in the State action by Plaintiff pursuant to 28 USC 1343 or 42 USC 1983, with respect to the Federal Constitution, but at all times material hereto has been allegations of professional negligence only against said Defendant;

6. That therefore all allegations against Defendant Allen Counard do not formulate requisite sufficient allegations of federal jurisdiction, pursuant to 28 USC 1343 nor under 42 USC 1983-1985-1986;

7. That at no time does Plaintiff allege nor maintain that Defendant Allen Counard ever acted pursuant to color of state law or pursuant to state action, and in fact at all times material hereto, Plaintiff agrees that Defendant Allen Counard was a private attorney allegedly engaged by Plaintiff to perform legal services for her in State court and at no time pursuant to any State action whatsoever;

8. That, in the alternative, this Court is hereby requested to dismiss the above-captioned cause pursuant to the Abstention Doctrine on the grounds that the malpractice action which is presently pending in State Court against Allen Counard has not been finally adjudicated by a final decision representing the verdict of the state court. That this Court is in no position to guage the allegations of constitutional wrongdoing posited by Plaintiff against Defendant for

the reason that the State Court has not as yet reached a final decision as to Allen Counard. Therefore, it is inappropriate at this time for this Court to decide a deprivation of civil rights, since Plaintiff's case in state court has not yet been finally adjudicated, and the matter remains wholly premature and unripe for decision pursuant to 42 USC 1983, 28 USC 1343;

9. That this Court possesses discretion under Huffman v Pursue, 420 US 592 (1974), and analagous cases which hold that this Court will not interfere with a state court action pending which is, at the time of the filing of the federal action, as yet unadjudicated;

10. That therefore this Defendant requests that this Court exercise its discretion in favor of dismissal of the above-captioned action until such time as the state court action against Allen Counard is settled by verdict in favor of Plaintiff or in favor of Defendant, at which time the civil rights of Plaintiff will become much more clarified.

WHEREFORE, Defendant prays as follows:

A. That this Court act at once to remand the above captioned action to the Michigan Supreme Court, or Wayne County Circuit Court, wherever the matter is properly resting at the present time (Plaintiff has proceedings pending in both Courts at this time);

B. That in the alternative this Court act in the exercise of its discretion to dismiss the above-captioned action until

such time as Plaintiff has received a decision from state court on the propriety of her malpractice action against Defendant Counard, or until such final decision as Plaintiff's constitutional rights will become more clarified.

PLUNKETT, COONEY, RUTT, WATTERS, STANCZYK & PEDERSEN
By Thomas M. O'Leary (P18466)

Dated:
August 7, 1979

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR REMAND OF ABOVE-CAPTIONED ACTION

FACTS

Essentially this is the third lawsuit filed by Plaintiff in proper person against some or all of these Defendants.

Defendant Metropolitan Savings allegedly attempted to foreclose upon Plaintiff's home mortgage when she failed to keep her escrow account current. The first suit resulted in the decision and statement of facts found in the Cramer decision reported at 401 Mich 252.

Later, Plaintiff filed a second suit in Wayne County Circuit Court which is pending in that Court and before the Michigan Supreme Court on rehearing -- Plaintiff filed an interlocutory appeal in that case. Defendant Counard, her attorney for a short time in the first suit, was added as a Defendant. Defendant McFadden was added in the third suit, the case at bar in Federal Court. McFadden is Plaintiff's attorney in the second suit.

The second case has not reached a final Order as to Defendant, upon whose behalf

this Abstention Motion is brought.

ARGUMENT

The within Motion for Remand to the Michigan Supreme Court or Wayne County Circuit Court (Plaintiff has proceedings in both Courts), is made pursuant to the thirty (30) day requirement for a timely Petition for Removal being filed, under 28 USC 1441, 1446.

That, in the alternative, if this Court does not remand the newly filed Complaint for declaratory judgment, that this Court exercise its discretion under the following cases, to dismiss without prejudice the above-captioned action until such time as the State Court action Virginia Cramer v Allen Counard, Wayne County Circuit Court - No. 78-822-879-CZ, has been finally adjudicated, so that Plaintiff's constitutional rights, if any, will become more clarified.

See Huffman v Pursue, 420 US 592 (1974); Duke v Texas, 477 F2d 244 (CA5 1973); Younger v Harris, 401 US 37 (1971); Ahrensfeld v Stephens, 528 F2d 193 (CA7 1975).

The above cases suggest that this Court is empowered to decline to exercise jurisdiction in a civil case where there is, as here, presently pending State Court litigation which has yet to be resolved.

PLUNKETT, COONEY, RUTT, WATTERS,
STANCZYK & PEDERSEN
By Thomas M. O'Leary (P18466)
Attorney for Allen Counard

Dated:
August 7, 1979

Filed September 26, 1979 - No. 9 72 789
U. S. District Court

OPPOSITION TO MOTION FOR REMAND

OPPOSITION TO MOTION TO EXERCISE DISCRETION IN ABSTENTION AND DISMISSAL

Now comes Virginia Cramer, Petitioner-defendant in wrongful foreclosure action, in pro per, and in opposition to Defendant Allen Counard's motion for remand and in opposition to motion to exercise discretion in absention and dismissal, Petitioner says as follows:

1. Answering paragraph 1, Petitioner denies the same and avers that the Wayne County Circuit Court on October 24, 1978 denied Defendant Counard's motion for Accelerated and/or Summary Judgment, with Order and Memorandum Opinion in support thereof, and that, therefore, the action is not pending before the Wayne Circuit Court, and is pending only in the Michigan Supreme Court, Docket no. 62249.

2. Answering paragraph 2, Petitioner denies the same and avers that a new action was commenced on July 14, 1978, with causes independent and separate from the prior action, and that the Michigan Supreme Court denied her application for leave to appeal on February 7, 1979, and further, denied Reconsideration of same, with denial of other motions including Motion to Reverse, Void or Correct Defective Decision and Motion for Oral Argument, on May 3, 1979, and that subsequent motions were filed in the Michigan Supreme Court, by Attorney William R. McFadden on behalf of Virginia Cramer, and which said motions are still pending in the Michigan Supreme Court,

No. 62249; and that Petitioner filed her Petition for Removal on July 17, 1979, pursuant to 28 USCA 1441 and 28 USCA 1446, for the reason that she is the defendant in the wrongful foreclosure-action initiated and instigated by mortgagee-Metropolitan - Federal Savings and Loan Association, pursuant to the Michigan Foreclosure by Advertisement Statute MCLA 600.3201 et seq., MSA 27A.3201 et seq. and where the decision reported at 401-Mich 252 is resting, and where defendant-mortgagor (Cramer) has never been heard and never allowed to be heard.

That Petitioner asserts that the amount in controversy exeeds the value of $10,000., (original jurisdiction statute 28 USC 1331,) and that her rights have been ruthlessly violated under the provisions of 28 USC 1343 and 42 USCA 1983 and 1985, et seq.

3. That Petitioner denies that removal is untimely under 28 USC 1446; and avers that the Court may enlarge the time in its discretion, in any event; and that, as above stated, the Michigan Supreme Court matter is currently pending where Petitioner seeks reformation or voiding of defective decision reported at 401 Mich 252, and that said decision reported at 401 Mich 252 is defective, primarly, and for the reason that the attorneys (on both sides) engaged in legal malpractice, negligence, misrepresentations, concealment and fraud and deceit, in perpetration of fraud upon the court and upon the defendant-mortgagor (Cramer), and more specifically, relative to: "The Wayne Circuit Court, Thomas J. Murphy, J., granted judgment for the defendants on a finding that the plaintiff was in default." -- and - "Plaintiff finally stopped the escrow payments, * * *. Plaintiff admits in her brief that she did not maintain a current escrow account." -- among other misrepresentations in 401 Mich 252. It is not frivolous.

4. That Petitioner (Cramer) agrees that Attorney Allen Counard committed malpractice, which he admits, in the handling of her claim, and further that by his gross negligence and fraud and deceit allowed and engaged in perpetration of fraud upon the court and fraud upon his client-Cramer, and while also concealing the fraud perpetrated by Client-Cramer's former attorney Abel Selburn, together with concealment of fraud perpetrated by the attorneys for Metropolitan Federal Savings and Loan Association, and, more specifically, but not limited to, with reference to and related to: "The Wayne Circuit Court, Thomas J. Murphy, J., granted judgment for the defendants on a finding that the plaintiff (Cramer) was in default." - as reported in 401 Mich 252.

5. That Petitioner denies that her allegations have been only of professional negligence, and as above stated, her allegations include a conspiracy and cover-up involving all the attorneys, on both sides, whoever they may be, and not limited to only the attorneys involved and/or named herein, and more specifically in regard to the illegality and/or unenforceability of the mortgage covenant and agreement involved in the decision reported at 401 Mich 252.

6. Petitioner denies that allegations against Defendant Allen Counard do not formulate requisite sufficient allegations for federal jurisdiction pursuant to 28 USC 1343 or 42 USC 1983, 1985, 1986, and that Petitioner avers that the prior action of Cramer vs Metropolitan, et al, reported at 401 Mich 252, reeks with a lack of testimony needed in lower court "proceedings" and which prejudiced and harmed mortgagor-client-Cramer, and while attorney Abel Selburn and Attorney Allen Counard, and each of them were motivated

to manage the case for the purpose of denying client-Cramer due process of law in violation of the Fourteenth Amendment to the United States Constitution; and further, while attorney Allen Counard covered-up for the misconduct of attorney Abel Selburn who was first engaged by Virginia Cramer in said prior action reported at 401 Mich 252.

7. Petitioner-Cramer answers paragraph 7, by re-asserting that attorney-Defendant Allen Counard was motivated to manage the case for the purpose of denying client-Cramer due process of law in violation of the Fourteenth Amendment to the United States Constitution.

8. Answering paragraph 8, Petitioner-Cramer re-asserts that Attorney Thomas M. O'Leary representing attorney-defendant Allen Counard, is also motivated by conspiratorial design to deny Petitioner-Cramer due process of law in violation of the Fourteenth Amendment to the United States Constitution, and that discretionary exercise of the Abstention Doctrine, by the Court, will deny appellate processes to Petitioner-Cramer; that in the malpractice action presently pending in the State Court against attorney-Allen Counard, his only defense is the two-year Statute of Limitations which is not applicable where fraud is shown; and that pending in the State Court, as to Defendant-attorney Counard, are the following matters:

> Opposition to Setting Aside Default of Defendant-attorney Allen Counard for failure to plead and defend and where no meritorious defense was shown; and that the neglect of attorney Thomas M. O'Leary representing attorney-defendant-Counard is generally regarded as attri-

butable to his client. White v Sadler, 1957, 350 Mich 511, 87 NW2d 192.

No affidavit of facts showing a meritorious defense was submitted, in the current action, as pending in the Michigan Supreme Court, No. 62249.

Further, answering paragraph 8, Attorney Thomas M. O'Leary representing attorney-defendant Allen Counard, fails to apprise and inform this Honorable court that the Wayne Circuit Court (Honorable Charles S.-Farmer) has ruled against attorney-defendant William P. Thorpe (who also represents Metropolitan Federal Savings and Loan) as to the Statute of Limitations in this matter (in oral argument on August 24, 1978), based on Petitioner-Cramer's assertions and allegations of fraud and deceit of the attorneys involved in prior action (Wayne) 115-792 and reported at 401 Mich 252.

Further answering paragraph 8, Attorney Thomas M. O'Leary representing attorney-defendant Allen Counard fails to apprise and inform this Honorable court that in the absence of any meritorious defense for attorney-defendant Allen Counard, where Petitioner-Cramer was systematically and continuously denied due process of law, and during all of the approximate two-year period that attorney-Counard managed the-prior action (Wayne 115-792), it is ludicrous, to say the least, that attorney Thomas M. O'Leary proposes a further delay in this matter so as to further deprive Petitioner-Cramer of civil rights and due-process, especially where attorney-defendant Allen Counard failed to plead and defend in the State court and he is relying solely on the two-year Statute of Limitations, as to legal malpractice.

9. Answering paragraph 9, Petitioner-Cramer again asserts that her rights and constitutional guarantees have been ruthlessly violated, in the prior action (Wayne 115-792) and in the Michigan Supreme Court decision reported at 401 Mich 252; and that the Michigan Supreme Court in the current action is refusing to grant Petitioner-Cramer a day in court, and thereby contributing, conspiratorially, to the denial of her civil rights and violative of the Fourteenth Amendment to the United States Constitution, in denying due process of law, as to her claims of fraud, concealment and deceit of lawyers, and in denying due process of law as to the defective decision reported at 401 Mich 252, and because of the failure and neglect of the attorneys she was forced to hire who have prejudiced and harmed her. Further, that the matter involving attorney-defendant Allen Counard is not interlocutory for the reason that his attorneys are claiming that petitioner-Cramer waived her appeal rights where the Wayne Circuit Court ordered payment of costs of $50.00 to her on granting, in abuse of discretion, defendant-Counard's motion to set aside default of defendant-Counard, and which is a final matter, but which the Michigan Supreme Court has denied Petitioner-Cramer's application for leave to appeal together with motions denied as to the defective decision reported at 401 Mich 252.

Further answering paragraph 9, the Federal court cannot be said to be interferring with a state court action pending, where the Michigan Supreme Court is forcing Petitioner-Cramer to seek relief in the Federal jurisdiction.

10. Answering paragraph 10, Petitioner-Cramer asserts that dismissal of the

action before the Court determines jurisdiction is totally improper; that the Court cannot dismiss an action without first assumming jurisdiction over the controversy; that Attorney Thomas M. O'Leary cites no applicable statute or case law to permit the Court to dismiss without jurisdiction.

WHEREFORE Petitioner-Cramer prays:

A. That this Court assume jurisdiction and deny Defendant-attorney-Counard's motion to remand (especially where it is apparant that said attorneys do not know where the State case is resting, and contrary to attorney-O'Leary's statements).

B. That this Court deny defendant-attorney-Counard's motion to exercise discretion violative of the law and in violation of Petitioner-Cramer's civil rights and the right to due process and opportunity to be heard.

C. That this Court deny Defendant-Counard's motion for Abstention and Dismissal of Declaratory Complaint so that Petitioner-Cramer may not be further deprived of due process and deprived of appellate review, for the ends of justice, and for the reason that there are no appeal rights under said Abstention doctrine.

/s/ Virginia Cramer
Petitioner in pro per
Defendant in wrongful foreclosure

Dated:
Sept 20, 1979

BRIEF IN SUPPORT OF OPPOSTION TO MOTION FOR REMAND AND OPPOSITION TO MOTION TO EXERCISE DISCRETION IN ABSTENTION AND DISMISSAL.

FACTS

Petitioner-Cramer hired Attorney-Allen Counard in about April or May 1970 (after she had fired Attorney-Selburn in about March 1970 because of his gross negligence in failing to file pleadings in the prior action (Wayne) 115-792). Attorney-Allen Counard was supposed to have managed the case (prior action No. 115-792) during an approximate two-year period from about May 1970 through about March 1972. When the Wayne Circuit Court denied a Motion for Leave to file an Amended Complaint (in May 1970), Attorney-Allen Counard took the matter on appeal without taking into consideration an "Order Dissolving Temporary Restraining Order" fraudulently entered by Thomas J. Murphy, the first Wayne Ciruit Court judge in the prior action 115-792. The said "Order Dissolving Temporary Restraining Order" dated September 27, 1968, was prepared by the Attorney-Michael Doelle for Defendants-Metropolitan Federal Savings and Loan, as a finding of "default in her mortgage" and for which hearing date for the entry of said "Order", on September 27, 1968, Cramer's attorney, Abel Selburn, did not attend.

Subsequently, when Cramer's attorney, Allen Counard, was managing the case, the attorneys for Metropolitan consistently claimed that the matter was "res Judicata" because of the "Order Dissolving Temporary Restraining Order" dated September 27, 1968, as a "finding of default in her mortgage."

Attorney-Allen Counard failed and neglected to utilize the proper means and procedure to have the said "Order" dated September 27, 1968, voided or nullified. (and Cramer, a non-lawyer, did not know how.)

That same "Order Dissolving Temporary Restraining Order" dated September 27, 1968, is shown in the Michigan Supreme Court decision dated October 6, 1977, and reported at 401 Mich 252, as follows: "The Wayne Circuit Court, Thomas J. Murphy, J., granted judgment for the defendants on a finding that the plaintiff was in default." The said "Order" was not a judgment. There were no findings of fact. No exhibits were entered into the record. The said "Order" is shown on page 67a, Volume I, of Appendix on Appeal-Appellant, as follows: (No. 57215)

ORDER DISSOLVING
TEMPORARY RESTRAINING ORDER

(State of Michigan --Circuit Court--County of Wayne) (Filed September 27, 1968)

At a session of said Court held in the Court Room in the City-County Building in the City of Detroit, on the 27th day of September, 1968.

Present: The Honorable Thomas J. Murphy,
Circuit Judge

This matter having come on to be heard on Plaintiff's Motion for Order to Show Cause why a preliminary injunction should not issue, the Court having previously entered a Temporary Restraining Order in this Matter, and the Court having examined the pleadings which have been filed, and the Court having heard testimony and examined the Exhibits which have been filed and heard oral argument by the attorneys representing

representing both parties, and the Court having determined that Plaintiff is in default on her Mortgage, and the Court being fully advised in the premises, now therefore,

It is hereby ordered and adjudged that the Temporary Restraining Order previously entered by the Court in this matter restrain the Defendants from proceeding with foreclosure on the following described property:

> East 33 feet of Lot 5 and West 24 feet of Lot 6, of Gordon-Saperstein Subdivision No. 1 of Part of the SW 1/4 of Sec. 6, T2SR10E, Dearborn Township WCM as recorded in L80 P2 Wayne County Records

be and the same hereby is dissolved, set aside and held for naught, and the Defendants are hereby permitted to proceed with their foreclosure action on the above described property.

/s/ Thomas J. Murphy
Circuit Judge

The Court of Appeals Opinion, filed July 22, 1971, as shown in Volume I, page 123a, Appendix on Appeal-Appellant, No. 57215, (which was the appeal handled by Attorney-Allen Counard for Cramer) shows, in part, as follows:

> "A circuit judge (not the judge who had heard the matter in 1968) entered an order denying Mrs. Cramer's request to file an amended complaint and denying her demand for jury trial; and subsequently he entered a summary judgment dismissing her complaint on the ground that the 1968 finding that she was in default made at the time the temporary restraining order was dissolved was res

judicata. Mrs. Cramer appealed. We reverse and remand for further proceedings.

"The summary 1968 hearing on the order to show cause was not a trial hearing. The transcript, 16 pages in length, is largely colloquy between lawyers and the judge. One witness for Metropolitan Federal was sworn and gave testimony. Mrs. Cramer's evidnece was not heard.

"The dissolution of the temporary restraining order in the present case did not end Mrs. Cramer's action which sought money damages as well as injunctive relief. She was entitled to a full trial hearing on her claims that Metropolitan Federal wrongfully foreclosed the mortgage and was guilty of other wrong doing and that, in consequence, money damages should be awarded to her.

* * *

"Reversed and remanded for further proceedings consistent with this opinion. Costs to plaintiff."

However, the attorneys for the Defendants-Metropolitan have consistently claimed that the "1968 finding that she was in default"—is res judicata." Further, attorney-Allen Counard, on a Motion to Strike Defendants (Metropolitan) affirmative defense of "adjudged in default" in her mortgage, obtained an Order striking the word "adjudged," as shown on page 172a, Volume I - Appendix on Appeal-Appellant, where said "Order Granting Plaintiffs Motion to Strike" is dated August 20, 1971. Attorney-Allen Counard continued managing said case with depositions and other motions, and during which time, the attorneys for Defendant-Metropolitan still claimed "res judicata" because of said

"Order" entered on September 27, 1968, as a "finding that the plaintiff was in default."

Further, in the meanwhile, all during the time that each of the attorneys, Abel Selburn and/or Allen Counard, are managing the case, no testimony is taken from Cramer, no testimony from Cramer allowed, and she was never heard and never allowed to be heard. It is obvious to Cramer, that all a person must do is to hire a lawyer to be denied due process of law and be denied the equal protection of the law. It appears that the only formula the courts have to offer is to "hire a lawyer" and be denied a day in court. That is specifically what has occurred in the prior action (Wayne 115-792) Docket No. 57215, decided October 6, 1977, and reported at 401 Mich 252.

Both Abel Selburn and Allen Counard mismanaged the case, and it appears that they did it intentionally.

Now, in the new action pending in the Michigan Supreme Court No. 62249, and where attorney-Allen Counard is in default for failure to plead or defend (as a Defendant) in (Wayne) No. 78-822-879 CZ, the Michigan Supreme Court has denied Cramer leave to appeal, to try to remove the false facts in said decision upon which said decision is based -- misrepresentations and false facts.

ARGUMENT

Petitioner-Cramer opposes Co-Defendant-attorney-Allen Counard's (by his attorney, Thomas M. O'Leary) motion for remand and motion to exercise discretion in abstention and dismissal, on the following grounds:

Co-Defendant Allen Counard is without

standing to motion the court for anything -- and, especially, without standing to motion the court to exercise discretion in abstention.

The alleged violations of the Constitution here, to wit: that Cramer has systematically and continuously been denied due process of law and denied the equal protection of the law, and where, in truth, Cramer's legal rights have been ruthlessly violated where the attorneys have covered-up for each other.

Furthermore, the court must assume jurisdiction before a matter can be dismissed. Further, a dismissal of the case would be on the merits, not for want of jurisdiction and by abstention. For cases discussing the distinction between questions going to the merits and those going to the jurisdiction, see:

Illinois Central R. Co. v Adams, 180 US 28;
Geneva Furniture Co v Karpen, 238 US 254;
Nashville, C. & St. L.R. Co. v Taylor, 86 F 168.

Further, it is the established practice of the United States Supreme Court to sustain the jurisdiction of the federal courts to issue injunctions to protect rights safeguarded by the Constitution, Philadelphia Co v Stimson, 223 US 605; Hays v Seattle, 251 US 233; Pennoyer v McConnaughy, 140 US 1; City Railway Co. v Citizens' Railroad Co., 166 US 557; City of Mitchell v Dakota Telephone Co., 246 US 396; and to restrain individual state officers from doing what the 14th Amendment forbids the State to do. Chicago, B. & Q. R. Co. v Chicago, 166 US 226; see also Ex parte Virginia, 100 US 339.

Further, jurisdiction is not defeated by the possibility that the averments might fail to state a cause of action on which Petitioner could actually recover. "For it is well settled that the failure to state a proper cause of action calls for a judgment on the merits and not for a dismissal for want of jurisdiction. Whether the complaint states a cause of action on which relief could be granted is a question of law and just as issues of fact it must be decided after and not before the court has assumed jurisdiction over the controversy. If the court does later exercise its jurisdiction to determine that the allegations in the complaint do not state a ground for relief, then dismissal of the case would be on the merits, not for want of jurisdiction." Bell v Hood, 327 US 678; Swafford v Templeton, 185 US 487; Binderup v Pathe Exchange, 263 US 291.

Co-Defendant-Attorney-Allen Counard's motion for remand and motion to exercise discretion in abstention and dismissal are absent of any contentions or facts and do not show that Petitioner-Cramer's cause is insubstantial or frivolous. Petitioner-Cramer's complaint, in fact, sets forth serious questions, both of law and fact, which the District Court can decide only after it has assumed jurisdiction. Bell v Hood, 327 US 678.

Also, see: Burger, A Sick Profession, 5 Tulsa L J 1 (1968). Judge Warren E. Burger, in describing the state of the legal profession, commented and posited the following proposition:

"(1) the legal profession as a whole has very poor standing;

(2) there are many causes for this, some of them incompetence, misconduct, bad manners and lack of training of a great many lawyers who appear in the courts; and

(3) there is something we can and ought to do about this as the English bar and bench did a century ago."

For the reasons shown above, the Court should deny motion for remand and deny motion to exercise discretion in favor of abstention and dismissal of Petitioner-Cramer's Complaint.

Respectfully submitted,

/s/ Virginia Cramer,
Petitioner in pro per
Defendant in wrongful foreclosure

Dated:
Sept 20, 1979

Filed August 14, 1979 - No. 9-72789
U. S. District Court

MOTION FOR JUDGMENT ON THE PLEADINGS (by Selburn) OR IN THE ALTERNATIVE SUMMARY JUDGMENT

Now comes ABEL J. SELBURN, one of the Defendants in the foregoing matter, and files this motion under Title 28, USCA Rule 12 (c), or in the alternative, Rule 56, and states as follows:

1. Complaint herein fails to show Federal jurisdiction over the subject matter because there is no diversity of citizenship, nor is there a Federal

question involved. The only allegations as relate to Defendant SELBURN are found in Paragraph 1, 1.4, where no allegation of fact is made supporting Plaintiff's claims. In Paragraphs 8.7, 8.8, 8.12, 8.13, 814, 8.15, each and all of which states conclusions of law and sets forth no facts in support of said conclusions.

2. No Federal question is presented as relates to this Defendant, which alleges apparently attorney malpractice and is not based upon a Federal question or diversity of citizenship. All allegations against Defendant SELBURN do not contain sufficient allegations of Federal jurisdiction pursuant to 28 USCA Par. 1343, or under 42 USCA Par. 1983-1985-1986.

Further, Defendant moves the Court to dismiss the action because it appears on the fact of the Complaint and from the allegations therein that the claim set up in said Complaint did not accrue, if it accrued at all, the Plaintiff within three years before the bringing of this action, and therefore is barred by the Statute of Limitations.

WHEREFORE, Defendant ABEL J. SELBURN moves for judgment for no cause of action on the pleadings in this matter, and prays that this Honorable Court award ABEL J. SELBURN costs and fees in having to defend this matter.

ABEL J. SELBURN (P 20204)
Dated: Defendant in Pro per
Aug. 13, 1979

AFFIRMATIVE DEFENSES

The Defendant, ABEL J. SELBURN, will rely on the following affirmative defenses:

1. No Federal question.

2. No diversity of citizenship.

3. The Statute of Limitations.

4. Failure to state a claim upon which relief can be granted.

/s/ ABEL J. SELBURN (P 20204)
Defendant in pro per

ANSWER TO COMPLAINT FOR DECLARATORY JUDGMENT

Now comes ABEL J. SELBURN, one of the Co-Defendants in the above cause, in his own proper person, and for his Answer to Petitioner-Defendant's (sic) Complaint for Declaratory Judgment, says:

1. Jurisdiction and Venue.

1. Answering Paragraph 1.1, Defendant SELBURN admits the paragraph with the exception of the statements relating to "competent counsel", and to the extent that this is reflection on the capacity or ability of SELBURN. Said statement is denied for the reason it is not true.

2. Answering Paragraphs 1.2 and 1.3, SELBURN neither admits nor denies same, not having sufficient information upon which to form a belief; and further, said paragraphs do not refer to SELBURN.

3. Answering Paragraph 1.4, SELBURN neither admits nor denies the allegations as they relate to Defendants COUNARD and McFADDEN, not having sufficient information upon which to form a belief; but as to the allegations addressed to Defendant

SELBURN, SELBURN admits the location of his office and that he was retained in 1968 by Plaintiff, specifically as to said foreclosure matter, and that he withdrew in February, 1970 as counsel to Plaintiff in said foreclosure matter.

4. Answering Paragraphs 1.5 and 1.6, Defendant SELBURN states the allegations in no way relate to him.

5. Answering Paragraph 1.7 and the sub-paragraphs contained thereunder, Defendant SELBURN neither admits nor denies that Federal jurisdiction exists for Plaintiff under the various Federal and Michigan constitution and Federal citations referred to as relates to other Defendants, but denies that said quoted law creates any Federal jurisdiction as relates to Defendant SELBURN, for the reason that no showing has been made of any connection between Plaintiff and Defendant SELBURN as relates to any of said cited law.

6. Answering Paragraph 1.8, Defendant SELBURN denies that this has any relevancy to him, and affirmatively states that he is neither a State nor an officer or agency thereof.

7. Answering Paragraph 1.9, Defendant SELBURN denies that this Court has any jurisdiction, since no Federal questions are raised in relation to him.

8. Answering Paragraph 1.10, Defendant SELBURN denies that this paragraph relates to him.

2. Cause of Action and Federal Intervention

9. Answering Paragraph 2.1 through 2.7, Defendant SELBURN denies that the allegations have any relevancy or relation to him.

3. Wrongful Foreclosure, Slander of Title

10. Answering Paragraphs 3.1 through 3.11, Defendant SELBURN denies that the allegations have any relevancy to him.

4. Actual Controversy - State Action Involved

11. Answering Paragraphs 4.1 through 4.8, Defendant SELBURN denies that the allegations have any relevancy to him.

5. Willful and Malicious Tort

12. Answering Paragraphs 5.1 through 5.4, Defendant SELBURN denies that the allegations have any relevancy to him.

6. Fraud, Concealment and Deception - Attorney Malpractice

13. Answering Paragraph 6.1, Defendant SELBURN re-alleges his answers hereinbefore contained in Paragraphs 1.1 through 5.4, as though each paragraph were restated herein.

14. Answering Paragraph 6.2, Defendant SELBURN denies the allegations contained therein, except he admits that he was engaged by Plaintiff in 1968.

15. Answering Paragraph 6.3, Defendant SELBURN admits that Plaintiff retained his services; as to the balance of the allega-

tions contained therein, he denies said allegations and affirmatively states that the Statute of Limitations has run as to any claim of malpractice by the Plaintiff against Defendant.

16. Answering Paragraph 6.4, Defendant SELBURN denies the allegations contained therein.

17. Answering Paragraph 6.5, Defendant SELBURN denies the allegations contained therein for the reason that the same are untrue.

18. Answering Paragraph 6.6, Defendant SELBURN denies the allegations contained therein.

19. Answering Paragraphs 6.7 through 6.27, Defendant SELBURN denies the allegations have any relevancy or relations to him.

20. Answering Paragraph 6.28, Defendant SELBURN denies that any cause of action against him accrues from the decision contained in 401 Mich 252.

7. Fraud, Concealment or Deception - Attorney Malpractice

21. Answering Paragraphs 7.1 through 7.36, Defendant SELBURN denies any relevancy to him.

8. Conspirators - Obstructionists of Justice

22. Answering Paragraph 8.1, Defendant SELBURN states that the act cited speaks for itself and has no relevancy to him.

23. Answering Paragraph 8.2, Defendant SELBURN admits that Plaintiff engaged his services on or about August, 1968, and

neither admits nor denies the remaining allegations.

24. Answering Paragraph 8.3, Defendant SELBURN denies that the allegations have any relation or relevancy to him.

25. Answering Paragraph 8.4, Defendant SELBURN incorporates each and every one of his answers to Paragraphs 1 through 7 above and the sub-paragraphs hereunder, as though each paragraph and sub-paragraph were each fully restated.

26. Answering Paragraph 8.5 and 8.6, Defendant SELBURN denies that the allegations have any relation to him.

27. Answering Paragraph 8.7, Defendant SELBURN denies that allegations contained therein for the reason that the same are untrue. As to Defendants COUNARD and McFADDEN, neither admits nor denies the allegations, and further affirmatively states that said paragraph pleads a conclusion without a single supporting allegation of fact, and therefore, Defendant SELBURN moves to strike said paragraph as it relates to him.

28. Answering Paragraph 8.8, Defendant SELBURN neither admists nor denies the allegations as relates to COUNARD or McFADDEN. He denies that he was a conspirator, that he impeded, hindered, and/or obstructed Plaintiff's rights to the equal protection of the laws, and further denies that he acted in his own interest; he further affirmatively states that he was discharged by the Plaintiff in February, 1970, and had no further interest or knowledge of the proceedings thereafter.

He further affirmatively states the Plaintiff pleads a conclusion without a single supporting allegation of fact, and therefore moves to strike said paragraph as it relates to him.

29. Defendant SELBURN denies that Paragraph 8.9 has any relevancy or relation to him.

30. Answering Paragraph 8.10, Defendant SELBURN denies the allegations contained therein.

31. Answering Paragraph 8.11, Defendant SELBURN denies that the allegations have any relevancy or relation to him.

32. Answering Paragraph 8.12, Defendant SELBURN denies the allegations as contained to him, and neither admits nore denies the allegations as relate to Defendants COUNARD or McFADDEN, and further and affirmatively states that the plaintiff pleads a conclusion without a single supporting allegation of fact, and therefore Defendant SELBURN moves to strike said paragraph as it relates to him.

33. Answering Paragraphs 8.13, 8.14 and 8.15, Defendant SELBURN neither admits nor denies the allegations as relates to COUNARD and McFADDEN, but as relates to himself, he denies the same for the reason that the allegations are not true; and further affirmatively states the Plaintiff pleads a conclusion without a single supporting - allegation of fact, and therefore, Defendant SELBURN moves to strike said paragraphs as relate to him.

9. Actual Controversy - Federal Action Involved

34. Answering Paragraphs 9.1 through 9.25, Defendant SELBURN states that these paragraphs do not relate to him.

10. Injunctive Relief Against Michigan Supreme Court Justices

35. Answering Paragraphs 10.1 through 10.23, Defendant SELBURN states that these paragraphs do not relate to him.

11. Measure of Damages

36. Answering Paragraph 11.1, Defendant SELBURN denies this paragraph has any relavancy to him, and further and affirmatively states that this paragraph appears to be seeking damages against him. Defendant SELBURN denies that Plaintiff is entitled to relief; and further and affirmatively states that no one single allegation of fact has been pled in support of said claims for damages.

37. Answering Paragraph 11.2, Defendant SELBURN denies that Plaintiff is entitled to a trial by jury in this cause, inasmuch as this matter as it relates to Defendant SELBURN may be disposed of by motion, which motion is herewith being filed.

38. Answering Plaintiff's prayer for relief - Paragraphs 12.1 through 12.7, Defendant SELBURN denies that the Plaintiff is entitled to any of the relief prayed for.

ABEL J. SELBURN (P 20204)
In Pro Per

Filed August 14, 1979 - No. 9-72789
U. S. District Court

BRIEF IN SUPPORT OF MOTION FOR JUDGMENT ON PLEADINGS

This is a lawsuit filed by Plaintiff in proper person against numerous Defendants, including Defendant SELBURN. Breaking the pleadings down, it would appear that Plaintiff's claim against Defendant SELBURN sounds in attorney malpractice for services rendered in August of 1968 through the time when his relationship ceased with the Plaintiff in February of 1970. The lawsuit that he was engaged to represent Plaintiff was a civil action in the Wayne County Circuit Court concerning foreclosure of a mortgage. The balance of the instant suit are allegations against various other attorneys, METROPOLITAN SAVINGS & LOAN ASSOCIATION, its officers and directors, and the Michigan Supreme Court.

Plaintiff pleads that Defendant SELBURN was a private attorney allegedly engaged by Plaintiff to perform legal services for her in a Michigan state court, and at no time pursuant to any state action whatsoever. There is no allegation of diversity of citizenship.

Issue

1. Is there diversity of citizenship?

2. Is there a Federal question presented?

3. Is there a claim upon which relief can be granted?

4. Has the Statute of Limitations run as to the claim against Defendant SELBURN?

Argument

Plaintiff is no stranger to the courts, and brings this action in pro per. She does not allege diversity of citizenship. On the contrary, she alleges she is a citizen of Wayne County, Michigan, and that Defendant SELBURN is an attorney with offices in Oakland County. Plaintiff does not rely upon diversity of citizenship to maintain her action in the Federal courts. 28 USC 1332.

Neither does Plaintiff present a Federal question in order to predicate Federal jurisdiction herein. Jurisdiction cannot be based on the ground of a Federal question through a mere general statement or conclu- - sion that a Federal question or the construction of a Federal statute is involved, where no supporting facts are alleged. Also, it cannot be based on a mere assertion that - State law or action is lacking in due process. See Douglas vs. City of Jeannette, 130 F2d 652, Affirmed 319 US 157.

Likewise, Defendant SELBURN moves to dismiss for failure to state a claim upon which relief can be granted under Rule 12, Federal Rules of Civil Procedure, or in the alternative, as a motion for summary judgment under Rule 56. As to Defendant SELBURN, Plaintiff's allegations are in the form of conclusions rather than facts. (Paragraphs 1, 1.4, 8.7, 8.8, 8.12, 8.13, 8.14 and 8.15) A claim and right to relief thereon can be shown only by alleging sufficient facts, and not by merely alleging conclusions of law. A claim cannot be stated in the form of any legal conclusion without more, and mere conclusions of law cannot sufficiently advise the adverse party so he can prepare his defense or inform the

Courtso it can determine the question sought to be presented. See Sheridan-Wyoming Coal Co., Inc. vs. Krug, 168 F2d 557. Characterization of acts by legal attributes or consequences is a conclusion. Assertion of a failure to render service is a conclusion, and cannot sufficie to show such matter. Ulrich vs. Freedman, 196 F 113.

Likewise, Plaintiff's suit against Defendant SELBURN alleges legal malpractice for services rendered in 1968 to early 1970. Plaintiff dismissed Defendant SELBURN in February of 1970. The two year Statute of Limitations under this section to bring an action against an attorney for malpractice runs from the date client discharges said attorney. An attorney malpractice action commenced more than two years after client's discharge of attorney is time barred. Basic Food Industries, Inc vs Travis et al, 60 Mich App 492.

Plaintiff has commenced numerous actions and prosecuted appeals to and including the United States Supreme Court. She is well conversant with law in any and all phases, especially as that law which deals with attorneys, their actions, and her rights as a lay person. She has previously brought actions against attorneys for malpractice. See Wayne County Circuit No. 78-822-879-DZ, wherein Defendant SELBURN was not brought as a Defendant and if he had, a Statute of Limitations still would have been a bar to the action.

In view of the above, this matter must be dismissed as to Defendant SELBURN.

Respectfully submitted,
/s/ ABEL J. SELBURN (P20204)
Defendant in pro per

Dated:
Aug 14, 1979

August 17, 1979 - No. 9-72789
U. S. District Court

DEFENDANT ABEL J. SELBURN'S MOTION FOR JUDGMENT ON THE PLEADINGS OR SUMMARY JUDGMENT

ORDER

The motion filed in the above-entitled cause will be denied unless the movant files, within five (5) days of the date of this order, a proof of service as required by Local Court Rule (X(i).

/s/ ROBERT E. DeMASCIO
United States District Judge

Dated:
August 17, 1979

Filed September 26, 1979 No. 9-72789
U. S. District Court

MOTION TO STRIKE CO-DEFENDANT-SELBURN'S AFFIRMATIVE DEFENSES

Now comes Petitioner-Cramer, in pro per, Defendant-mortgagor in wrongful foreclosure action, and respectfully moves the Honorable-court to enter an Order striking the affirmative defenses of Co-Defendant Abel J. Selburn, pursuant to Rule 11 and Rule 12 (f), for the following reasons:

1. The affirmative defense of "no Federal question" is a sham and false, and is impertinent and insufficient defense,

intended as a mockery of the court, as more fully shown in Petitioner's opposing pleadings, incorporated by reference herein.

2. The affirmative defense of "no diversity of citizenship" is an insufficient defense and impertinent, as a mockery upon the court, as more fully shown in Petitioner's opposing pleadings, incorporated by reference herein.

3. The affirmative defense of "the statute of limitations" is a sham, impertinent and immaterial and insufficient defense, as more fully shown in Petitioner's opposing pleadings, incorporated by reference herein.

4. The affirmative defense of "failure to state a claim upon which relief can be granted" is a question of law, and as purported by Co-Defendant-Attorney-Selburn, an insufficient defense, impertinent and immaterial as related to said co-defendant Abel J. Selburn, as more fully shown in Petitioner's opposing pleadings, incorporated by reference herein.

This motion is based upon the records and files herein and pursuant to Rule 11 and 12 (f).

WHEREFORE, Petitioner-Cramer prays that this Honorable court will Order stricken from the records the affirmative defenses of co-defendant Abel J. Selburn, and that the court will exercise its discretion as to appropriate disciplinary action against the said co-defendant Abel J. Selburn, pursuant to Local Court Rule IV (a), (b) (4) and (d).

Dated:
Sept 20, 1979

/s/ Virginia Cramer,
Petitioner in pro per
Defendant in wrongful foreclosure

Filed September 26, 1979 No. 9-72789
U. S. District Court

AFFIDAVIT IN SUPPORT OF MOTION TO STRIKE and IN OPPOSITION TO (SELBURN'S) AFFIRMATIVE DEFENSES

Petitioner-Cramer opposes Defendant-Selburn's affirmative defenses as follows:

1. Federal questions are presented involving conspiracy, obstructing justice, obstructing due court of justice, violation of civil rights, impeding and hindering due process of law and denial of equal protection of law, fraud, concealment and deceit, legal malpractice, and other matters under Acts of Congress and including, but not limited to, violations under the Fourteenth Amendment to the United States Constitution, deprivation of property and injury to person and property, among other Federal questions enumerated in Petitianer's pleadings herein.

2. Diversity is not required to be shown in all cases before the Federal jurisdiction; however, there are about 35 lawyers, or more, in the Federal Home Loan Bank Board, in Washington, D.C. - "No diversity" is an insufficient and sham defense for attorney-Abel Selburn.

3. The Statute of limitations is not applicable where fraud is shown or alleged; the Statute of Limitations has not yet begun to run.

4. Relief sought -- award of money damages by judgment for execution, among other relief including, but not limited to, reformation of State court decision and Writ of error coram non judice.

/s/ Virginia Cramer,
Petitioner in pro per
Defendant in wrongful
foreclosure

Dated:
Sept 20, 1979

Filed September 26, 1979 No. 9-72789
U. S. District Court

BRIEF IN SUPPORT OF MOTION TO STRIKE
CO-DEFENDANT-SELBURN'S AFFIRMATIVE DEFENSES

Petitioner incorporates by reference herein the following pleadings and matters with regard to Petitioner's MOTION TO STRIKE CO-DEFENDANT-SELBURN'S AFFIRMATIVE DEFENSES, as follows:

Affidavit and Opposition to (Selburn's) Motion for Judgment on the Pleadings or in the Alternative Oppostion to Summary Judgment.

Exceptions In Reply to Co-Defendant-Selburn's Answer

Opposition to (Selburn's) Affirmative Defenses and Affidavit

Brief in Support of Opposition to (Selburn's) Motion for Judgment on the Pleadings, and Affidavit

COURT RULES

Petitioner relies on the following Court Rules:

Rule 11. " * * * The signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. * * * If a pleading is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the pleading had not been served. For a willful violation of this

> rule an attorney may be subjected to appropriate disciplinary action. * * * "

Rule 12. Defenses and Objections. * * *

> (f) * * * upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent * * * matter. (emphasis added)

Local Rule IV. Discipline of Attorneys.

(a) The Chief Judge shall have charge of all matters relating to the discipline of members of the Bar.

(b) The Court may make an order in a disciplinary proceeding disbarring, suspending or censuring, or taking such other action as justice may require, with respect to a member of the Bar of this Court, or an attorney admitted under Rule V (d) hereof. * * *

> (4) who is guilty of conduct unbecoming a member of the Bar of this Court. Such conduct shall be deemed to consist of fraud, deceit, malpractice, or violation of the Canons of Ethics of the American Bar Association or of the Michigan State Bar Association.

(d) Cases within subdivision (4) of paragraph (b) shall be presented to the Chief Judge, and if he deems the charges of professional misconduct of sufficient weight, he shall refer them for preliminary investigation and recommendation to the Michigan State Bar Association and, in his discretion,

to the United States Attorney. The recommendation shall be presented to the Chief Judge."

In view of the matters shown in Petitioner-Cramer's pleadings in response to Co-Defendant-Abel Selburn's pleadings and incorporated by reference herein, the matter should be given serious consideration by this Honorable Court, with reference to the duties of the Chief Judge, as to all matters relating to the discipline of members of the Bar.

Respectfully submitted,

/s/ Virginia Cramer,
Petitioner in pro per
Defendant in wrongful
foreclosure

Dated:
Sept 20, 1979

Filed Sept 26, 1979 - No. 9-72789
U. S. District Court

OPPOSITION TO (SELBURN'S MOTION FOR JUDGMENT ON THE PLEADINGS OR IN THE ALTERNATIVE OPPOSITION TO SUMMARY JUDGMENT

Now comes Virginia Cramer, Petitioner, in pro per, and in opposition to Defendant-Abel Selburn's motion for judgment on the pleadings or in the alternative summary judgment, pursuant to Rule 12 (c) or Rule 56, Petitioner incorporates by reference herein her EXCEPTIONS IN REPLY TO CO-DEFENDANT-SELBURN'S ANSWER and Petitioner says as follows:

1. Answering paragraph 1, Petitioner denies the same and incorporates her

EXCEPTIONS IN REPLY TO CO-DEFENDANT-SELBURN'S ANSWER by reference herein, attached hereto, and where facts are shown to support Petitioner's claims as to Petitioner's Complaint and paragraphs 1.1, 1.4, 1.7, 1.8, 1.9, 1.10, 6.2, 6.3, 6.4, 6.5, 6.6 6.28, 8.1, 8.2, 8.7, 8.8, 8.10, 8.12, 8.13, 8.14, and 8.15—and as pertaining, specifically, to Defendant-attorney, Selburn, pursuant to the Fourteenth Amendment of the United States Constituion, 42 USCA 1983, 1985 et seq. among acts of Congress enumerated in Petitioner's Complaint involving Federal questions, and that there is a genuine issue involved precluding entry of summary judgment, as set forth in the facts shown.

2. Answering paragraph 2, Petitioner denies the same and affirmative—states that said attorney-malpractice is co-related with conspiratorial design to obstruct the due course of justice in the matters alleges in Petitioner's Complaint and Reply to Co-Defendant-Selburn's answer, incorporated by reference herein, involving federal questions under the provisions of the Fourteenth Amendment to the United States Constitution and enumerated in Petitioner's Complaint, incoporated by reference herein.

Further answering paragraph 2, Petitioner denies the same and affirmatively states that:

(a) Statute of Limitations is not applicable where fraud is shown,

(b) That the Statute of Limitations has not yet begun to run, and Petitioner's claim accrues where the Michigan Supreme Court relys on "Virginia Cramer brought an action to enjoin foreclosure of a mortgage and for damages against

Metropolitan Savings and Loan Association and its officers, alleging excessive escrow demands and mishandling of the escrow funds as a defense to the foreclosure. The Wayne Circuit Court, Thomas J. Murphy, J., granted judgment for the defendants on a finding that the plaintiff was in default. (emphasis added)

(c) That said "judgment for the defendants on a finding that the plaintiff was in default" is dated September 27, 1968, during which time, from August, 1968 through February 1970, attorney-Selburn was retained by Cramer to manage said case (Wayne) 115-792.

(d) That said "judgment" entered on September 27, 1968, is fraudulent, and was concealed from Cramer by the fraud and deceit of attorney-Abel Selburn, together with other attorneys named as co-defendants herein.

"Diversity" is not necessarily required in all cases to show Federal jurisdiction over the subject matter. Further, Petitioner-Defendant in wrongful foreclosure is not barred by the Statute of Limitations; and where fraud is shown there is no statute of limitations. Petitioner's cause of action is based upon fraud, concealment and deceit, in conspiratorial design, together with many and other various federal questions where by the corrupt-practices of lawyers in the State courts, she has been denied due process of law, denied the equal protection, denies the right and/or opportunity to be heard, - and she has been victimized by said corruption in the State courts.

WHEREFORE Petitioner-Cramer prays that the Honorable court deny dismissal of the action, deny summary judgment and deny costs and fees.

Respectfully subm itted

/s/ Virginia Cramer,
Petitioner in pro per
Defendant in wrongful fore-
closure

Dated:
Sept 20,1979

(with Affidavit filed)

Filed Sept 26, 1979 No. 9-72789
U. S. District Court

EXCEPTIONS IN REPLY TO CO-DEFENDANT-SELBURN'S ANSWER

Now comes Petitioner-Cramer, in pro per, and in reply to Co-Defendant Abel Selburn's Answer to Complaint, Petitioner states her exceptions and disagreeme nts, as follows:

Paragraph 1.1, Defendant-Abel Selburn takes exception to Petitioner's statement relating to "competent counsel" as a reflection on the capacity or abiaity of Selburn and denies the same.

Petitioner's reply: It was necessary for Cramer to file a grievance with the State Bar of Michigan against attorney-Selburn, for his gross negligence and deceit where he had furnished copies of pleadings to Cramer with a cover-letter stating that said pleadings had been filed in the Wayne Circuit Court in CA No. 115-792. However, there were no such pleadings filed and the defendants-Metropolitan were not served and the attorneys for Metropolitan never were furnished copies. Attorney-Abel Selburn claimed that the Wayne Circuit

Court record room lost the pleadings.- Said grievance was handled by the Bar-grievance Board in about March or April, 1970. Cramer had hired attorney Abel Selburn in August 1968. Cramer lost her appeal rights and delayed appeal rights, and however, Cramer had no knowledge of the September 27, 1968, "Order Dis olving Temporary Restraining Order" entered as a "default" in the mortgage. Attorney-Abel Selburn deliberately concealed that information from Cramer.

That same "Order Dissolving Temporary Restraining Order" entered on September 27, 1968, while attorney-Abel Selburn - was managing the case, is why Attorney-Thorpe (for Metropolitan) continuously claims "res judicata" and that the "Court found her in default of her mortgage."

That also is the same Order referred to in the Michigan Supreme Court decision - of October 6, 1977, as: "The Wayne Circuit Court, Thomas J. Murphy, J., granted judgment for the defendants on a finding that the plaintiff was in default."

It is the same document, and dated September 27, 1968. It is not a judgment. There were no findings of fact; no exhibits were entered into the record at the one and only hearing on September 6, 1968, at which attorney-Abel Selburn appeared on behalf of Cramer, and which said hearing resulted in said Order dated September 27, 1968.

No "default" in the said mortgage was shown; no records of the mortgage account were presented, and there was only one hearing, to wit: on September 6, 1968, and no evidence and no exhibits are shown in the transcript.

Nothing was produced by the mortgagee and their attorneys.

Paragraph 1.4, Defendant-Abel Selburn admits that he was Cramer's counsel in said foreclosure matter and that he was retained "in 1968) and that he "withdrew" in February, 1970.

Petitioner's reply: The transcript of the one and only hearing on September 6,-1968, as above-stated, shows that attorney-Selburn attended that hearing, and Cramer was also present at that one and only hearing, before Wayne Circuit Court Judge Thomas J. Murphy.

Paragraph 1.7, Jurisdiction claimed under - 42 USCA 1985 et seq. and Defendant-attorney-Selburn denies that said quoted law creates any Federal jurisdiction as relates to Defendant Selburn.

Petitioner's reply: Defendant-attorney- - Selburn is named as one of the co-conspirators, as an obstructionist of justice. (See on page 25 of Petitioner's Complaint.)

Paragraph 1.8, Attorney-defendant-Selburn denies that he is an officer.

Petitioner's reply: All attorneys are officers of the court. The Court is a State operation.

Paragraph 1.9, Attorney-defendant-Selburn denies that this Court has any jurisdiction, "since no Federal questions are raised in relation to him."

Petitioner's reply: Defendant-attorney- - Selburn is named as one of the co-conspirators and obstructionist of justice, under the provisions of 42 USCA 1985 et seq.

Paragraph 1.10, Attorney-defendant-Selburn denies "irreparable injury" to Cramer, and he denies "bad faith enforcement" of MCLA 600.3201 et seq.; MSA 27A.3201 et seq.

Petitioner's reply: Defendant-attorney-Selburn was present, on behalf of Cramer, at the one and only hearing on September 6, 1968, where Judge Murphy said "go ahead with the foreclosure," and which resulted in said "Order" dated September 27, 1968, as aforementioned. -- and attorney-Selburn failed and neglected to file any pleadings in the Court.

Paragraph 6.2, Attorney-defendant-Selburn admits that his services were retained by Cramer in 1968, and he denies knowing of "the damage and harm occurring against Plaintiff, and said injury to her person and property would continue to occur, when Plaintiff engaged the legal service of said-attorney-Abel Selburn and which he did nothing to prevent the occurrence of damage and harm to Plaintiff." (FRAUD, CONCEALMENT AND DECEPTION - Attorney Malpractice)

Petitioner's reply: Attorney-defendant-Selburn filed absolutely no pleadings in said case (Wayne CA No. 115-792), but he deceived Cramer by claiming that he had filed pleadings. A foreclosure causes a great deal of harm and injury and damage, and attorney-Selburn did nothing on behalf of Cramer.

Paragraph 6.3 (FRAUD, CONCEALMENT AND DECEPTION -- Attorney Malpractice) Attorney-defendant-Selburn admits that Cramer retained his services (in 1968) "and affirmatively states that the Statute of Limitations has run as to any claim of malpractice"

Petitioner's reply: There is no statute of limitations where fraud is shown.

Paragraph 6.4, (FRAUD, CONCEALMENT AND DECEPTION - Attorney Malpractice) Attorney-defendant-Selburn denies that he "abandoned the case in fraud of his client, Virginia Cramer, and failed and neglected to prevent damage and harm to said client".

Petitioner's reply: Where attorney-Selburn admits he was reained in 1968, and then says he "withdrew" in "February 1970" and he deceived his client-Cramer regarding the filing of pleadings, and in fact, filed no pleadings, that is abandoning the case in fraud of his client.

Paragraph 6.5, (FRAUD, CONCEALMENT AND DECEPTION - Attorney Malpractice) Attorney-defendant-Selburn denies that "by fraud and deceit, attorney-Abel Selburn led Cramer to believe that he was acting on behalf and in her best interests, when, in fact, attorney-Abel Selburn neglected and deliberately failed to act in the interest of client-Cramer."

Petitioner's reply: Attorney-Selburn admits he was retained by Cramer "in 1968" - the transcript shows he appeared in Court on September 6, 1968; the "Order Dissolving Temporary Restraining Order" as a "finding of default of Cramer's mortgage" has constantly been claimed to be "res judicata" by the attorneys for Metropolitan, and attorney Abel Selburn did nothing; no pleadings filed; he did nothing, and concealed matters and deceived Cramer all during the approximate 18 months.

Paragraph 6.6, (FRAUD, CONCEALMENT AND DECEPTION - Attorney Malpractice) Attorney-defendant-Selburn denies that "after almost eighteen (18) months had elapsed after Cramer

had hired said attorney-Abel Selburn, she discovered that said attorney-Abel Selburn had filed no pleadings in the Court in the prior action involving said mortgage foreclosure on Cramer's property."

Petitioner's reply: Actually and factually, there are no pleadings filed in the prior action (Wayne) No. 115-792 by Attorney-Selburn. Cramer prepared and filed the Complaint, Order to Show Cause with Temporary Restraining Order, in pro per, on August 12, 1968. Cramer filed an Amended Complaint on August 23, 1968, in pro per. Cramer hired Selburn on/or about August 26, 1968. He appeared at the one and only hearing on September 6, 1968, as shown in the transcript. Cramer filed additional pleadings in March 1970. No pleadings were filed by Selburn.

Paragraph 6.28, (FRAUD, CONCEALMENT AND DECEPTION-- Attorney Malpractice) Attorney-defendant-Selburn denies that any cause of action against him accures from the decision contained in 401 Mich 252.

Petitioner's reply: In said decision reported at 401 Mich 252 - it shows: "The Wayne Circuit Court, Thomas J. Murphy, J., granted judgment for the defendants on a finding that the plaintiff was in default." - and which is dated September 27, 1968, and Attorney-Abel Selburn did nothing about said "Judgment."

(Obviously, attorney-Allen Counard covered-up for Attorney-Abel Selburn and neither of them took the matter on appeal, as to said Order dated September 27, 1968.)

Paragraph 8.1 - CONSPIRATORS - OBSTRUCTIONISTS OF JUSTICE - Attorney-defendant-Selburn

states that 42 USCA 1985 et seq. has no relevancy to him.

Petitioner's reply: The act of Congress speaks for itself. Attorney-defendant-Selburn engaged in a conspiracy to interfere with Cramer's civil rights, obstructed, defeated, in a manner, the due course of justice, with intent to deny the equal protection of the laws, or to injure Client-Cramer and her property ---- when he did nothing as her attorney on the said foreclosure matter, and he deceived her and concealed matters regarding said Civil Action (Wayne) 115-792, for which he was hired to represent Cramer, when the Court would not allow Cramer to represent herself.

Paragraph 8.2 CONSPIRATORS - OBSTRUCTIONISTS OF JUSTICE - Attorney-Defendant-Selburn admits that Cramer engaged his services on or about August, 1968.

Paragraph 8.7 CONSPIRATORS - OBSTRUCTIONISTS OF JUSTICE - Attorney-defendant-Selburn denies that he became a deterrent with intent to defeat the due course of justice by managing the case so that Cramer would never have a day in court on said foreclosure.

Petitioner's reply: Attorney-Selburn filed no pleadings and deceived client-Cramer by claiming that he filed pleadings; attorney-Selburn concealed the matter of the September 27, 1968 Order entered by Judge Murphy. Attorney-Selburn did nothing to allow client-Cramer to have a day in court to be heard, defeating the due course of justice, by doing nothing on said case for approximately 18 months.

Attorney-defendant-Selburn ' moves to strike said paragraph as it relates to him." Attorney-defendant-Selburn states no grounds. The allegation of fact can be easily proven — by examining the court record (Wayne No. 115-792).

Paragraph 8.8 - CONSPIRATORS - OBSTRUCTIONISTS OF JUSTICE Attorney-defendant-Selburn denies "that he was a conspirator, that he impeded, hindered, and/or obstructed Cramer's rights to the equal protection of the laws, and further denies that he acted in his own interests, and he states that he was discharged by Cramer in February 1970.

> Petitioner's reply: In paragraph 1.4 (above) attorney-Selburn states that he — "withdrew." Now, in paragraph 8.8 attorney Selburn states that he was "discharged" in February 1970. In fact, he was "fired" for lying to Cramer and mishandling the case. In his own interest, he had received $6,000.00 (that's six thousand dollars) — from Cramer during the period of from August 1968 through February, 1970, and while he claimed to be filing pleadings, he filed no pleadings in the said case.

(Attorney-Eugene LaBelle helped Cramer to get her money back, which Attorney-Selburn's checks bounced.)

Attorney-defendant-Selburn "moves to strike said paragraph as it relates to him" and he affirmatively states that Cramer pleads a "conclusion without a single supporting allegation of fact".

> Petitioner's reply: Now the facts are shown. The omissions in the Wayne Circuit Court CA No. 115-792 are the facts.

Paragraph 8.10 - CONSPIRATORS - OBSTRUCTIONISTS OF JUSTICE Attorney-defendant-Selburn denies that he sent copies of pleading to Cramer and then, Cramer learned in February 1970 that attorney Abel Selburn has never filed any pleadings in the court in this matter, and thus, he abandoned the case in fraud of his client.

Petitioner's reply: Due process of law and the equal protection of the law, most always requires "paper work" which attorney Selburn failed and neglected to prepare and file in the court record.

Attorney-defendant-Selburn also states that Cramer pleads "a conclusion without a single supporting allegation of fact," and attorney-defendant-Selburn "moves to strike said paragraph as it related to him."

Petitioner's reply: The omission of pleadings in the court records is a fact. (Gravity and a lot of other things that are not visible are facts.) The Court may take judicial notice of omissions of pleadings. (and perhaps "Man's ability to reason")

Paragraphs 8.13, 8.14 and 8.15 - CONSPIRATORS - OBSTRUCTIONIST OF JUSTICE - Attorney-defendant-Selburn denies that he participated or unlawfully engaged in a conspiracy and unlawful combination for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in the State of Michigan, or wrongfully performed acts or wrongfully omitted the performance of acts or made statements in furtherance of participating as conspirators, in an unconstitutional manner, as obstructionists of justice, in "pari delicto" with client-

Cramer's adversaries, the attorneys for the opposition, and so acting against client-Cramer and for his own interest; and that - the overall purpose of the unlawful combination, as conspirators and obstructionists of justice, by said attorneys and lawyers, is to deceive the client while the attorney is acting on his own behalf and in his own interest, contrary to the interests of the client while at the same time taking money for legal services with the intent and purpose of self-interest against the client's interest" and he moves to strike said paragraphs as relating to him.

Petitioner's reply: Pleas refer to Petitioner's replies for paragraphs 1.1, 1.4, 1.7, 1.8, 1.9, 1.10, 6.2 6.3, 6.4, 6.5, 6.6, 6.28, 8.1, 8.2, 8.7, 8.8, 8.10, 8.12, and where the facts are shown, as above, and incorporated by reference herein.

WHEREFORE your Petitioner prays that she-may have a jury trial and that she be awarded damages and such other and further relief as is agreeable with equity and good conscience, and as prayed for in her complaint.

/s/ Virginia Cramer,
Petitioner in pro per -
Defendant in wrongful foreclosure

Dated:
Sept 20, 1979

(Affidavit attached)

Filed September 26, 1979 - No. 9-72789
U. S. District Court

BRIEF IN SUPPORT OF OPPOSITION TO (SELBURN'S) MOTION FOR JUDGMENT ON THE PLEADINGS

FACTS

It is amazing how Attorney-Defendant-Abel Selburn and Attorney-Defendant-William R. McFadden, togeher, have risen to the level of their own incompetence, and where their individual pleadings are almost identical. Said Defendants-Attorneys have the facts wrong, designed to mislead the court, and their pleadings consist of smelly garbage. (Pro se pleadings should be construed liberally by the court.)

Petitioner-Cramer, in propria persona, is a stranger to the Courts inasmuch as she is honest, upright, decent, straight-forward, good moral character and she detests dishonesty by the lawyers. That's why she is a "stranger" to the Courts, for the reasons that with her qualities of character, she is the "lone-stranger" in a packed, crawded courtroom.

Petitioner-Cramer hired attorney-Abel Selburn (in the prior action No. 115-792) in August, 1968, because she was forced to hire a lawyer when Judge Thomas J. Murphy (Wayne Circuit Court) now decease, helled at her and would not allow her to handle her own case, and stopped her from questioning John C. Denyer (of Metropolitan) on the witness-stand on August 16, 1968, on an "Order to Show Cause and peculiarly, that transcript is not available.

Attorney-Defendant-Abel Selburn filed no pleadings in the said prior action 115-792. As a matter of fact, while Cramer was led to

believe that Attorney-Abel Selburn was managing said case during the period of August 1968 through February 1970, he had already sold Client-Cramer out, by allowing the entry of a fraudulent Order, dated September 27, 1968, where it imports that Cramer was "in default" of her mortgage, and which is false. The Michigan Supreme Court decision of October 6, 1977, shows the said "Order Dissolving Temporary Restraining Order" as follows:

> "The Wayne Circuit Court, Thomas J. Murphy, J., granted judgment for the defendants on a finding that the plaintiff was in default." which is a fraudulent statement.

As a matter of fact, there are so very many false statements in that Michigan Supreme Court decision, that it is shameful that the members of the highest court in the State put their signatures to it. My God, the people in the Michigan Supreme Court know your Petitioner was never heard and never allowed to be heard.

Now attorney-Selburn is garbaging up this case with his divertive issue of "diversity of citizenship" among other garbage. Mr. Abel Selburn is obviously a very insecure person when he resorts to all such garbage, diversions, innuendos and false statements, such as: "Plaintiff has commenced numerous actions and prosecuted appeals to and a including the United States Supreme Court. She is well conversant with law in any and all phases, especially as that law which deals with attorneys, their action, and her rights as a lay person. She has previously brought actions against attorneys for malpractice." --- which is a bunch of garbage and a lot of baloney, together with being mostly false.

Petitioner-Cramer moves that the Court strike the entire "brief in support of motion

for judgment on pleadings" as submitted by attorney-defendant-Abel Selburn, on the grounds of being sham, false, insufficient -- defense, redundant, immaterial, and impertinent, and of no value to the instant action unless the Court, in its discretion, would refer the matter to be investigated by the Grievance Commision of the State Bar of Michigan, for the purpose of suspending and/or disbarring Abel Selburn.

(incidentally, that defense of "no diversity" is a bad joke; and it infers, actually, that all attorneys are the same as Abel Selburn.)

ARGUMENT

Summary judgment is not proper where there are issues of material fact. Rule 56. (FRCP)

Petitioner-Cramer's allegations of fraud, concealment and deceit, together with matters of attorney malpractice are pleaded with particularity, as required. Rich v Touche Ross and Company (DC NY) 68 FRD 243.

"A declaration which alleges the illegal purpose intended by the conspiracy and the fact that the purpose has been carried out to the plaintiff's damage is sufficient, even though not specifically showing the means used." Scofield v Clarke, 1914, 146 NW 377, 179 Mich 681.

In a most significant aspect of a decision involving malpractice proceedings against an attorney, in Randall v Brigham, 7 Wall. 523 (1868), the authority of the courts was reiterated. The Court's opinion declared:

"It is not necessary that proceedings against attorneys for malpractice, or

any unprofessional conduct, should be be founded upon formal allegations against them. Such proceedings are often instituted upon information developed in the progress of a cause; or from what the court learns of the conduct of the attorney from his own observation. Sometimes they are moved by third parties upon affidavit; and sometimes they are taken by the court upon its own motion. All that is requisite to their validity is that, when not taken for matters occurring in open court, in the presence of the judges, notice should be given to the attorney, of the charges made and opportunity afforded him for explanation and defense. The manner in which the proceeding shall be conducted, so that it be without oppression or unfairness, is a matter of judicial regulation."

See Justice Terrell's concurring opinion, where it was recognized that the public is losing faith in the profession and attorneys do not enjoy the public trust in their critical position as guardians of the people's rights. Dodd v The Florida Bar, 118 So. 2d 17 (Fla. 1960)

In Dodd v The Florida Bar, 118 So 2d 17 (Fla. 1960), Justice Terrell further remarked:

"This and other courts have many times called attention to the fact that one practices law by grace and not by right, that the practice of law is affected with a public interest and that the privilege to practice may be withdrawn from one when wilful disregard of the honor of the profession is shown. It is common knowledge that many lawyers personally enjoy public esteem and confidence, but

as a profession the public is skeptical of us and we do not enjoy the measure of public confidence we should." Id. 20

Judge Warren E. Burger, in describing the state of the legal profession, commented and posited the following proposition:

"(1) the legal profession as a whole has very poor standing;

(2) there are many causes for this, some of them incompetence, misconduct, bad manners and lack of training of a great many lawyers who appear in the courts; and

(3) there is something we can and ought to do about this as the English bar and bench did a century ago."

See, Burger, A Sick Profession, 5 Tulsa L.J. 1, (January 1968)

Unless the organized bench and bar is able to meet the challenge and clean up its "own house" the state of the profession will remain in ill repute. Again in the words of Cardozo, "(i)f the house is to be cleaned, it is for those who occupy and govern it, rather than for strangers, to do the noisome work." People ex rel. Karlin v Culkin, 248 NY 465, 480; 162 NE 487 (1928)

In view of the above, the Court should deny Selburn's motion for dismissal, deny Selburn's motion for judgment on the pleadings, or in the alternative, deny Selburn's motion for Summary Judgment.

/s/ Virginia Cramer,
Petitioner in pro per
Defendant in wrongful foreclosure

Dated:
Sept 20, 1979

Filed August 9, 1979 - No. 9-72789
U. S. District Court

ANSWER TO COMPLAINT FOR DECLARATORY JUDGMENT

Now comes William R. McFadden, one of the co-defendants in the above cause, in his own proper person, and for his Answer to petitioner-defendant's Complaint for Declaratory Judgment, says:

PREAMBLE

1. Answering paragraphs 1 through 67 of petitioner-defendant's (hereinafter referred to as Cramer) Preamble, William R. McFadden either admits nor denies the allegations contained therein, not having sufficient documents and information any longer in his possession to answer; inasmuch as the records and files heretofore in his possession have been returned to Cramer, at her request, insistance and demand.

2. Answering paragraph 68, William R. McFadden denies the date referred to, to-wit: February 26, 1979, but admits filing two separate motions in the Michigan Supreme Court; and further denies that he refused to present anything "alternatively" and refused to prepare and file pleadings in the Federal Court "on anything, except a 'mutual covenant'"; and denies that there was any "glaring and serious defect", but admits that there was a "dispute between McFadden and Cramer" (and further and affirmatively states that said "dispute" arose as a consequence of the inability of Cramer to communicate and the incessant and unrelenting argument by plaintiff at conferences intended to prepare pleadings for filing, which arguments prevented and precluded the development of any pleadings and which culminated in a several hour conference in which partially pre-prepared pleadings by McFadden were under discussion

and at which Cramer refused, hour by hour, to discuss anything beyond the first page thereof, and as a consequence of which it was recognized by both Cramer and McFadden that representation was impossible); and McFadden denies that he is withholding "all of Cramer's papers, documents and copies of pleadings which he refuses to relinquish"; and further and affirmative states that:

(a) Cramer had, and has, copies of each and every of said papers, documents and copies of pleadings; and

(b) The return of said papers, documents and copies of pleadings was the subject matter of a motion to withdraw by McFadden filed in the Michigan Supreme Court and that all of said papers, documents and copies of pleadings were returned to Cramer immediately upon McFadden's becoming apprised of the existence of this law suit as a discharge of him as Cramer's attorney; and further, inasmuch as this law suit contains a Motion for rem oval of the matter in front of the Michigan Supreme Court to this Court, this suit amounts to a disposition of the Motion before the Michigan Supreme Court; and in support thereof, McFadden attaches hereto, and marks McFadden's Exhibit "1", and makes it a part hereof by reference, a letter addressed to Cramer from McFadden, dated July 23, 1979, and a receipt from the post office dated July 23, 1979, and a receipt from the post office dated July 25, 1979, for said papers returned to Cramer, which is marked McFadden's Exhibit "2"; and McFadden denies that Cramer is "severely handicapped" for reason that she at all

times has had, in her possession, all papers, documents and copies of pleadings as hereinabove set forth.

3. 1. Jurisdiction and Venue

Answering paragtaph 1.1, McFadden admits the paragraph, with the exception of the statement related to "competent counsel" and to the extent that this is a reflection on the capacity or ability of McFadden, said statement is denied for reason it is not true

4. Answering paragraphs 1.2 and 1.3, McFadden neither admits nor denies same, not having sufficient information upon which to form a belief; and further, said paragraphs do not refer to McFadden.

5. Answering paragraph 1.4, McFadden neither admits nor denies the allegations as relate to Abel Selburn and/or Allen Counard, not having sufficient information upon which to form a belief; but as to the allegations addressed to McFadden, McFadden admits the location of his office and that Cramer retained his services, but denies the allegations in the manner and form set forth that said services were specifically related to "said foreclosure matter", inasmuch as the foreclosure was a fact accomplished, whether proper or improper, years prior to the time Cramer first contacted McFadden.

6. Answering paragraphs 1.5 and 1.6, McFadden neither admits nor denies the allegations for reason he does not have sufficient information upon which to form a belief, and inasmuch as the allegations in no way relate to McFadden.

7. Answering paragraph 1.7 and the subparagraphs (a) through (k) contained thereunder, McFadden neither admits nor denies

the Federal Jurisdiction exists for Cramer under the statutory and Federal and Michigan Constitution and Federal citations referred-to thereunder as relates to the other defendants, but denies that said quoted law creates any Federal jurisdiction as relates to McFadden, for reason that no showing has been made of any connection between Cramer and McFadden as relates to any of said cited law.

8. Answering paragraph 1.8, McFadden denies that this has any relevancy to him.

9. Answering paragraph 1.9, McFadden denies that this Court has any jurisdiction as relates to McFadden, since no "Federal Questions" are raised in relation to him.

10. Answering paragraph 1.10, McFadden denies that this paragraph relates to him; and further, all actions under said cited Michigan Statute occured prior to, by several years, any involvement by McFadden with Cramer.

11. 2. Cause of Action & Federal Intervention

Answering paragraph 2.1 through 2.7, McFadden denies that the allegations have any relevancy or relation to McFadden.

12. 3. Wrongful foreclosure, slander of title

Answering paragraphs 3.1 through 3.11, McFadden denies that the allegations have any relevancy or relation to McFadden.

13. 4. Actual Controversy--State Action Involved

Answering paragraphs 4.1 through 4.8, McFadden denies that the allegations have any

relevancy or relation to McFadden.

14. 5. Wilfull and Malicious Tort

Answering paragraphs 5.1 through 5.4, McFadden denies that the allegations have any relevancy or relation to McFadden.

15. 6. Fraud, Concealment and Deception -- Attorney Malpractice

Answering paragraph 6.1 through 6.28, McFadden denies that the allegations have any relevancy or relation to McFadden.

16. 7. Fraud, Concealment or Deception -- Attorney Malpractice

Answering paragraphs 7.1 through 7.36, McFadden denies any involvement with McFadden.

17. 8. Conspirators -- Obstructionists of Justice

Answering paragraph 8.1, McFadden states that hte cited Federal Act will speak for itself.

18. Answering paragraph 8.2, McFadden neither admits nor denies the allegations as relates to Selburn and/or Counard; and denies the date of February 26, 1979, as relates to McFadden for reason it is not true; and further and affirmatively states that Cramer first contacted McFadden in February, 1979, but that a point of agreement was not reached on February 26, 1979, and was in fact never reached as to the full nature and extent of representation inasmuch as McFadden insisted that he first must read -- through several years of pleadings, correspondence, transcripts, testimony, court decisions and other material, amounting to any undetermined number of pages, but several pounds in weight, and that prior to the terms

of representation having been reach, representation was terminated as hereinabove set forth.

19. Answering paragraph 8.3, McFadden denies that the allegations have any relevancy or relation to McFadden.

20. Answering paragraph 8.4, McFadden incorporates each and every of his answers to paragraphs 1 through 7 above, and the sub-paragraphs thereunder, as though each-paragraph and sub-paragraph were fully restated; assuming that is what is meant by Cramer's statement that she realleges "each and every paragraph of the foregoing counts 1 through 8".

21. Answering paragraphs 8.5 and 8.6, McFadden denies that the allegations have any relevancy or relation to McFadden.

22. Answering paragraph 8.7, McFadden neither admits nor denies the allegations as relates to Selburn and/or Counard: but as relates to McFadden, McFadden denies that he was a "deterrent" and denies that "by design, with intent to defeat the due course of justice, managed the case so that plaintiff Cramer would never have a day in court on said foreclosure matter" for reason it is not true: and further and affirmatively states that said paragraph pleads a conclusion without a single supporting allegation of fact and therefore McFadden moves to strike said paragraph as relates to him.

23. Answering paragraph 8.8, McFadden neither admits nor denies the allegations as relates to Selburn and/or Counard; but as to McFadden, denies that he was a conspirator, that he impeded, hindered and/or obstructed plaintiff's rights to the equal protection of the laws. and denies that he acted in his own interest; denies that he

was an advisary to Cramer's cause and denies that any such allegation is "more fully set forth herein" and further and affirmatively states that Cramer pleads a conclusion without a single supporting allegation of fact and therefore McFadden moves to strike said paragraph as relates to him.

24. Answering paragraph 8.9, McFadden denies that he is currently withholding papers and that he refused to prepare and complete pleadings; and further and affirmatively states that the said papers, documents and files referred to by Cramer were at all times available to her, both in the particular that she had copies at all times of each and every of them and by reason that they were retained by McFadden pending his Motion to Withdraw in the Michigan Supreme Court and that it was fully explained both to Cramer and to the Michigan Supreme Court that the copies of said papers in his possession were available to be returned to Cramer at the earliest of the three following alternatives:

(a) Cramer's agreement to allow McFadden to withdraw as counsel;

(b) A granting by the Michigan Supreme Court of McFadden's Motion to Withdraw; or

(c) A hearing on the Motion for Re-hearing before the Michigan Supreme Court;

said papers, documents and files being necessary in order to properly argue said motion.

25. Answering paragraphs 8.10 and 8.11, McFadden denies that the allegations have any relevancy or relation to McFadden

26. Answering paragraph 8.12, McFadden neither admits nor denies the allegations as

relates to Selburn and/or Counard; but as relates to McFadden, he denies that he "conspired to deprive plaintiff due process of law with intent to deny the equal protection of the law for the reason that they do not want mortgagors to have any rights to the equal protection of the laws" for reason it is not true; and further & affirmatively states that Cramer pleads a conclusion without a single supporting allegation of fact and therefore McFadden moves to strike said paragraph as relates to him.

27. Answering paragraphs 8.13, 8.14 and 8.15, McFadden neither admits nor denies the allegations as relates to Selburn and/or Counard; but as to McFadden, he denies same for reason that the allegations are not true; and further and affirmatively states that Cramer pleads a conclusion without a single supporting allegation of fact and therefore McFadden moves to strike said paragraph as relates to him.

28. 9. Actual Controversy - Federal Action Involved

Answering paragraphs 9.1 through 9.25, McFadden states that the Federal Statutes and Regulations will speak for themselves; and further, these paragraphs do not relate to McFadden.

29. 10. Injunctive Relief Against Michigan Supreme Court Justices

Answering paragraphs 10.1 through 10.23, McFadden states that these paragraphs do not relate to him.

30. 11. Measure of Damages

Answering paragraph 11.1, McFadden denies that this paragraph has any relevancy to him;

and further and affirmatively states that this paragraph appears to seek damages in the sum of $100,000.00 against McFadden for "impairment of earning capacity, loss of time, special, general, exemplary and punitive damages" and to the extent it does, McFadden denies that Cramer is entitled to this relief; and further and affirmatively states that not one single allegation of fact has been plead in support of said claim for damages.

3. Answering paragraph 11.2, McFadden denies that Cramer is entitled to a trial by jury in this cause, inasmuch as this matter, as relates to McFadden, may be disposed of by Motion, which Motion said McFadden is here-with filing.

32. Answering Cramer's prayer for relief, paragraphs 12.1 through 12.7, McFadden denies that Cramer is entitled to any of the relief prayed for.

MOTION FOR JUDGMENT ON THE PLEADINGS

Now comes William R. McFadden, one of the defendants in the foregoing matter, and files this Motion under Title 28, U.S.C., Rule 12, as follows:

1. Cramer has failed to state a claim - upon which relief can be granted, as contemplated in Rule 12(b)(6) U.S., for reason that the only allegations, as relate to this defendant, are found in the Preamble, paragraph 68, paragraph (count)1, 1.4, where no allegation of fact is made supporting Cramer's claims; and in paragraph (count) 8, 8.2, where no allegation of fact is made; and paragraphs 8.7 8.8, 8.9, 8.12, 8.13, 8.14 and 8.15, each and all of which state conclusions of law and set forth no facts in support of said conclusions.

WHEREFORE, William R. McFadden moves for a

Judgment of no cause of action on the pleadings in this matter and prays that this Honorable Court award William R. McFadden costs and fees in having to defend in this matter.

/s/ WILLIAM R. McFADDEN
(P 17393) Defendant in pro per

Dated:
August 8, 1979

Filed August 20, 1979 - No. 9-72789
U. S. District Court

BRIEF IN SUPPORT OF MOTION FOR JUDGMENT ON PLEADINGS

FACTS

This is a lawsuit filed by plaintiff in proper person against numerous defendants, including defendant, William R. McFadden. Breaking the pleadings down, it would appear that plaintiff's claim against defendant, William R. McFadden, if any, sounds in conspiracy, WHICH MUST, OF NECESSITY, HAVE OCCURED PRIOR TO HIS ENTRY INTO THE CASE. The bulk of the allegations in this suit are allegations against various other attorneys, Metropolitan Savings & Loan Association, its officers and directors, and the Michigan Supreme Court and the Justices thereof.

Plaintiff pleads that defendant, William R. McFadden, was a private attorney allegedly engaged by plaintiff to perform legal services for her in Michigan state courts, and at no time pursuant to any state action whatso-ever. There is no allegation of diversity of citizenship.

ISSUES

I. Is there diversity of citizenship?

Plaintiff would answer "Yes"
McFadden does state the answer is "No"

II. Is there a Federal question presente

Plaintiff would answer "Yes"
McFadden does state the answer is "no".

III. Is there a claim upon which relief can be granted?
Plaintiff would answer "Yes"
McFadden does state the answer is "No"

ARGUMENT

Plaintiff is no stranger to the courts, and brings this action in pro per. She does not allege diversity of citizenship. On the contrary, she alleges she is a citizen of Wayne County, Michigan, and defendant, William R. McFadden, is an attorney with offices in Oakland County. Plaintiff does not rely upon diversity of citizenship to maintain her action in the Federal courts. 28 USC 1332.

Neither does plaintiff present a Federal question in order to predicate Federal jurisdiction herein. Jurisdiction cannot be based on the ground of a Federal question through a mere conclusion that a Federal question or the construction of a Federal statute is involved, where no supporting facts are alleged. Also, it cannot be based on a mere assertion that State law or action is lacking in due process. See Douglas v City of Jeannette, 130 F2d 652, Affirmed 319 US 157.

Likewise, defendant, William R. McFadden, moves to dismiss for failure to state a claim upon which relief can be granted, under Rule 12, Federal Rules of Civil Procedure, or in

the alternative, as a Motion for Summary Judgment under Rule 56. As to defendant, William R. McFadden, plaintiff's allegations are in the form of conclusions, not in allegations of facts. (Paragraphs 68 of Preamble, 1.4, 8.2, 8.7, 8.8, 8.9, 8.12, 8.13, 8.14 and 8.15). A claim and right to relief thereon can be shown only by alleging sufficient facts; not by merely alleging conclusions of law. A claim cannot be stated solely in the form of legal conclusions, and conclusions of law standing alone cannot sufficiently advise the adverse party so he can prepare his defense or inform the Court so it can determine the question sought to be presented. See Sheridan-Wyoming Coal Co., Inc. v. Krug, 168 F2d 557. Characterization of acts by legal attributes or consequences is a conclusion. Assertion of a failure to render service is a conclusion and cannot suffice to show such matter. Ulrich v Freedman, 196 F. 113.

RELIEF PRAYED FOR

William R. McFadden prays that this matter be dismissed as to defendant, William R. McFadden.

/s/ WILLIAM R. McFADDEN (P17393)
Defendant in Pro Per

Dated:
August 17, 1979

Filed September 26, 1979 - No. 9-72789
U. S. District Court

PETITIONER'S REPLY TO (McFADDEN'S) ANSWER TO COMPLAINT

Now comes Petitioner-Cramer, in pro per, and replying to Defendant-McFadden's answer to complaint, she says as follows:

1. Replying to paragraph 1, regarding McFadden's answer to paragraph 1 through 67 of petitioner's Preamble, Petitioner-Cramer states and avers that Defendant-McFadden returned only a smaller portion of Cramer's records and files, and that it was necessary for her to make many and numerous additional copies for filing in the Federal Court, for the reason that Defendant-McFadden still withheld and is still withholding a large part of Cramer's records and files.

2. Replying to paragraph 2, regarding Defendant-McFadden's answer to paragraph 68 (Preamble), Petitioner-Cramer states and avers that on February 26, 1979, Petitioner-Cramer was in Defendant-McFadden's office, in person, on said date of February 26, 1979 and in his presence, and at his request for retainer and fees for so-called legal servic Petitioner-Cramer wrote her check for $1,000 and gave said check to Defendant-McFadden in his office, on said date of February 26, 197 and the said check is dated February 26, 197

Further, replying to paragraph 2, Petitio er-Cramer states and avers that the said "di pute" was so prevalent that it necessitated an immediate telephone call to the Grievance Commission of the Michigan State Bar, on an emergency, and to relate said dispute to sai Grievance Commission member, and that almost immediately after said telephone conversatio Defendant-McFadden began pressuring Cramer t "sign a substitution." Cramer denies that said "dispute" arose as a consequence of the inability of Cramer to communicate, and the reverse is true. Further, Defendant-McFadde attitude and apprisal of the "case" was completely changed and reversed after he receiv the $1,000.00 payment from Cramer.

Further, the "dispute" between Cramer and

McFadden regarding the first page of the drafted papers by McFadden, is that it contained erroneous and falsified matters, and which Cramer objected to and refused to permit in said "pleadings."

Further, "disputes" between Cramer and McFadden regarding other matters, in this case, is where his drafted papers were designed to cover-up for the negligence and misconduct of the other two (2) lawyers, Selburn and Counard, who were managing the prior action (Wayne 115-792) whom your Petitioner hired. Further, at every step, along the way, your Petitioner has had to deal with, constantly and unreasonably, with the prevarications and misrepresentations of lawyers. (on both sides)

Further, in capsule form herein, Defendant-McFadden's denials are prevarications and misrepresentations, and do not deserve such waste of time and energy by your Petitioner-Cramer or by the Court.

WHEREFORE Petitioner-Cramer prays that Defendant-McFadden's motion for judgment on the pleadings be denied.

/s/ Virginia Cramer,
Petitioner in pro per —
Defendant in wrongful foreclosure

Dated:
Sept 20, 1979

(Affidavit attached)

Filed September 26, 1979 No. 7-72789
U. S. District Court

OPPOSITION TO (McFADDEN'S) BRIEF IN SUPPORT OF MOTION FOR JUDGMENT ON PLEADINGS

This Honorable court has said (by letters directed to the parties herein) that untimely

responses will not be considered by the Court.

The docket entries, in the above-captioned matter, show as follows:

Aug 8, 1979 16. Deft McFadden's Motion for Judgment on pleadings with Answer to Complaint for declaratory judgment with Notice of hearing to be set and proof of service.
DD 8/8/79

Aug 20, 1979 28. Deft William McFadden's Brief in Support of Motion for Judgment on Pleadings.
DD 8/21/79

As noted, Defendant-McFadden's "Motion for Judgment on the Pleadings" was entered in the court record without a brief, and said "Motion" should not have been docketed on August 8,1979.

Further, Defendant-McFadden's "brief" contains "insufficient defense, immaterial and impertinent" matters, such as:

> "Breaking the pleadings down, it would appear that plaintiff's claim against defendant, William R. McFadden, if any, sounds in conspiracy, WHICH MUST, OF NECESSITY, HAVE OCCURED (sic, OCCURRED) PRIOR TO HIS ENTRY INTO THE CASE."
>
> "There is no allegation of diversity of citizenship."

Further, it appears that Defendant-McFadden has copied from Defendant-Abel Selburn's brief, dated August 14, 1979, and that said "copying" is almost word for word.

That the said insufficient defense, immaterial and impertinent matters should be

stricken from the records. That the said "brief" by Defendant-McFadden did not accompany his "Motion for Judgment on the Pleadings" and therefore, said "Motion for Judgment on the Pleadings" and said "Brief in Support of Motion for Judgment on the Pleadings" should be stricken from the records and the court should refuse to consider the untimely filed matter. The Court can see that the pleadings of Defendant-Abel Selburn and the pleadings of Defendant-McFadden are almost identical, and because of the untimeliness of Defendant-McFadden's "brief" and having been copied from Defendant-Selburn's pleadings, Defendant-McFadden's "Brief" should be stricken from the record.

/s/ Virginia Cramer
Petitioner in pro per
Defendant in wrongful foreclosure

Dated:
Sept 20, 1979

Filed September 26, 1979 No. 9-72789
U. S. District Court

OPPOSITION TO MOTION FOR JUDGMENT ON THE PLEADINGS

Now comes Petitioner-Cramer, in pro per, and in opposition to Defendant-attorney-McFadden's motion for judgment on the pleadings, she says as follows:

1. In Opposition to paragraph 1, Petitioner-Cramer states and avers that "the illegal purpose intended by the conspiracy and the fact that the purpose has been carried out to the plaintiff's damage is sufficient"; (see Petitioner-Cramer's brief, attached) and further, the court may take judicial notice of matters involving attorney-misconduct, malpractice, incompetence, misrepresentations, fraud and deceit and concealment, from the

pleadings and/or from the attorney's conduct in open court.

2. In opposition to Defendant-attorney-McFadden's insufficient defense of "no diversity" and any other impertinent, immaterial and/or redundant matters, the court may take judicial notice and should not be considered by the court, or the court may order said insufficient defense or immaterial, impertinent matters stricken from any pleading, on it's own initiative at any time.

3. Petitioner-Cramer's affirmative matters are as follows:

Relief sought -- Reformation of prior action "Judgment" and decision

Money damages incurred

Writ of error, coram non judice

And such other and further relief as is agreeable with equity and good conscience.

etcetera.

Respectfully submitted,
/s/ Virginia Cramer, Petitioner in pro per - Defendant in wrongful foreclosure

Dated: Sept 20 1979

BRIEF IN SUPPORT OF OPPOSITION TO (McFADDEN'S) MOTION FOR JUDGMENT ON THE PLEADINGS

FACTS

It is apparent that Defendant-attorney-

McFadden has copied, almost word for word, from the pleadings filed and subm itted by Defendant-attorney-Selburn. Where Cramer has stated that Defendant-attorney-Abel Selburn and Defendant-attorney-McFadden, together, have resen to the level of their own incompetence, the two together should be joined in holy malpractice, until death do them part. They must be married to each other.

(Pro se pleadings of a non-lawyer should be liberally construed by the court.)

ARGUMENT

"Judgment on the pleadings" is not proper where there are issues of material fact. Rule 56. (FRCP)

"No diversity" is an insufficient defense and is impertinent and a sham issue, and should be stricken from the pleadings and records of the court. Rule 12. (FRCP)

Petitioner-Cramer's allegaionts of fraud, concealment and deceit, together with matters of attorney malpractice are pleaded with particularity, as required, Rich v Touche Ross and Company (DC NY) 68 FRD 243.

"A declaration which alleges the illegal purpose intended by the conspiracy and the fact that the purpose has been carried out to the plaintiff's damage is sufficient, even though not specifically showing the means used." Scofield v Clarke, 1914, 146 NW 377, 197 Mich 681.

In a most significant aspect of a decision involving malpractice proceedings against an attorney, in Randall v Brigham, 7 Wall. 523 (1868), the authority of the courts was reiterated. The Court's opinion declared:

"It is not necessary that proceedings against attorneys for malpractice, or any unprofessional conduct, should be founded upon formal allegations against them. Such proceedings are often instituted upon information developed in the progress of a cause; or from what the court learns of the conduct of the attorney from his own observation. Sometimes they are moved by third parties upon affidavit; and sometimes they are taken by the court upon its own motion. All that is requisite to their validity is that, when not taken for matters occurring in open court, in the presence of the judges, notice should be given to the attorney, of the charges made and opportunity afforded him for explanation and defense. The manner in which the procedding shall be conducted, so that it be without oppression or unfairness, is a matter of judicial regulation."

See Justice Terrell's concurring opinion, where it was recognized that the public is losing faith in the profession and attorneys do not enjoy the public trust in their critical position as guardians of the people's rights. Dodd v. The Florda Bar, 118 So 2d 17 (Fla. 1960). In that case, Justice Terrell further remarked:

"This and other courts have many times called attention to the fact that one practices law by grace and not by right, that the practice of law is affected with a public interest and that the privilege to practice may be withdrawn from one when wilful disregard of the honor of the profession is shown. It is common knowledge that any lawyers personally enjoy public esteem and confidence, but as a profession the public is skeptical of us and we do not enjoy the measure of public confidence we should." Id. 20

Judge Warren E. Burger, in describing the state of the legal profession, commented and posited the following proposition:

"(1) the legal profession as a whole has very poor standing;

(2) there are many causes for this, some them incompetence, misconduct, bad manners and lack of training of a great many lawyers who appear in the courts; and

(3) there is something we can and ought to do about this as the English bar and bench did a century ago."

See, Burger, A Sick Profession, 5 Tulsa L. J. 1, (January 1968)

Unless the organized bench and bar is able to meet the challenge and clean up its "own house" the state of the profession will remain in ill repute. Again in the words of Cardozo, "(i)f the house is to be cleaned, it is for those who occupy and govern it, rather than for strangers, to do the noisome work." People ex rel. Karlin v Culkin, 248 NY 465, 480; 162 NE 487 (1928)

In view of the above, the Court should deny Defendant-McFadden's motion for judgment on the pleadings.

Respectfully submitted,
/s/ Virginia Cramer,
Petitioner in pro per
Defendant in wrongful foreclosure

Dated:
Sept 20, 1979

Filed August 31, 1979 - No. 9-72789
U. S. District Court

MOTION TO DISMISS POST-REMOVAL ADDITIONAL DEFENDANTS AND COMPLAINTS AND REMAND ORIGINAL PROCEEDING

The Federal Home Loan Bank Board, its director and officers, by and through James K. Robinson, United States Attorney, and Samuel J. Behringer, Jr., Assistant United States Attorney, both for the Eastern District of Michigan, respectfully moves this court pursuant to Federal Rules of Civil Procedure Rules 12 and 56 to strike the plaintiff's post-removal complaints, dismiss all new defendants added after removal and remand this entire action to the appropriate state court for the reasons set forth in the accompanying brief.

As required by Local Court Rule IX, movant's counsel attempted to seek the plaintiff's concurrance to the requested relief by telephone on August 21, 1979 but plaintiff refused to acquiesce and it therefore is necessary to file this motion.

Respectfully submitted,
JAMES K. ROBINSON
United States Attorney
/s/ SAMUEL J. BEHRINGER, JR.
(P23751)
Assistant United States Atty.

Dated:
8-30-79

Filed August 31, 1979 - No. 9-72789
U. S. District Court

BRIEF IN SUPPORT OF MOTION TO DISMISS POST-REMOVAL ADDITIONAL DEFENDANTS AND COMPLAINTS AND REMAND ORIGINAL PROCEEDING

The Federal Home Loan Bank Board, by and through its undersigned attorneys, submits

this brief in support of its instant motion.

Statement of the Proceedings

This instant action, as removed, requires attention to the proceedings in two different court systems.

A. STATE COURT PROCEEDINGS

In 1963 Cramer purchased a home with funds loaned by the Metropolitan Federal Savings and Loan Association and gave a mortgage to Metropolitan to secure the loan. (Plaintiff's Preamble paragraph 1, page 2). A dispute subsequently developed between Cramer and Metropolitan which caused Metropolitan to commence proceedings to foreclose the mortgage given by Cramer by advertisement in May of 1968. (Plaintiff's Preamble paragraphs 2-10, pages 2-5).

I. WAYNE COUNTY CIRCUIT COURT CIVIL ACTION 115-702 (sic. 115-792)

Cramer disputed the propriety of the foreclosure and eventually commenced a civil action in the Wayne County Circuit Court of the State of Michigan to, among other things, enjoin the foreclosure sale. (Plaintiff's Preamble, paragraph 33). The action was designated as Civil Action No. 115 792 and was styled:

VIRGINIA CRAMER, Plaintiff

VS

METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, a United States corporation, Defendant.

This pleading did not include the Federal Home Loan Bank Board or any of its directors

or officials as party-defendants. At this point in time Cramer was represented by counsel.

In subsequent proceedings in that court, a restraining order which had been issued was dissolved, a finding of default was made and Metropolitan was permitted to proceed to sale. (Plaintiff's Preamble, paragraphs 34 and 36, pages 9-10). After subsequent proceedings, a Judgment adverse to Cramer was entered which she appealed to the Michigan Court of Appeals. (Plaintiff's Preamble, paragraphs 38-42, pages 10-11).

The Michigan Court of Appeals reversed the Circuit Court and remanded the cause back to the latter court for further proceedings. At this point, Cramer received permission from the court to file an Amended Complaint styled as:

VIRGINIA CRAMER, Plaintiff

VS

METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, a United States corporation, JAMES I. McCLINTOCK, Chairman of Board of Directors, ROGER C. RICHARDS, President, JOHN C. DENYER, Assistant Vice-President, JOHN DOE, Members of the Board of Directors, RICHARD ROE, Vice-President and ALL OTHER OFFICERS OF METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION,

Defendants

This Amended Complaint did not include the Federal Home Loan Bank Board or any of its directors or officials as named party-defendants. It also did not include any members of the Michigan Supreme Court or the individually named attorneys.

In the course of proceedings upon the

Amended Complaint, Cramer availed herself of discovery and participation in pretrial proceedings. (Plaintiff's Preamble paragraphs 44-45, pages 11-12). She was not represented by new counsel, Allen Counard. Cross Motions for summary judgment came to be heard. On February 7, 1972 the Circuit Court ruled against Cramer and entered judgment in favor of Metropolitan on all counts.

A second appeal was lodged with the Michigan Court of Appeals from the February 7, 1972 determination which resulted in an affirmation of the Circuit Court's decision on all counts except Count IV. The matter was therefore remanded back to the Circuit Court for further proceedings upon Count IV. (Plaintiff's Preamble paragraph 53, page 14). A jury trial upon Count IV concluded with an adverse opinion to Cramer. (Plaintiff's Preamble paragraphs 54, page 14).

Cramer initiated her third appeal through the state court system. On October 6, 1977 the Michigan Supreme Court affirmed in favor of Metropolitan. Cramer v Metropolitan, 401 Mich 252 (1977). Two rehearing requests were denied by the Michigan Supreme Court on December 15, 1977 and February 1, 1979. (Plaintiff's Preamble paragraph 58, page 15).

Proceeding in pro per, Cramer then sought certiorari from the Supreme Court of the United States on April 27, 1978. The United States Supreme Court denied her petition on June 12, 1978.

II. WAYNE COUNTY CIRCUIT COURT CIVIL ACTION NO. 78-822-879 CZ

Following the United States Supreme Court denial of her certiorari petition, Cramer initiated a second action in the Wayne County Circuit Court on July 14, 1978. It was

designated as Civil Action No. 78-822-879 CZ and was styled as:

VIRGINIA CRAMER, Petitioner-Defendant (in wrongful foreclosure action)
Petitioner-Plaintiff

VS

METROPOLITAN SAVINGS ASSOCIATION a/k/a METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, JAMES I. McCLINTOCK, ROGER C. RICHARDS and JOHN C. DENYER, Jointly, severally and individually, Plaintiffs in wrongful foreclosure action,
Defendants.

and
McCLINTOCK DONOVAN CARSON & ROACH and JAMES I. McCLINTOCK, MICHAEL DOELLE and WILLIAM P. THORPE, attorneys at law, jointly, severally & individually
Co-Defendants.

and
ABEL SELBURN, ALLEN COUNARD and WILLIAM R. McFADDEN, attorneys at law, jointly, severally and individually.
Co-Defendants.

This pleading did not include the Federal Home Loan Bank Board or any of its directors or officials as party-defendants. Cramer did not prevail in obtaining the relief sought in this second civil action. Appeal was again pursued through the state court system. On February 7, 1979 the Michigan Supreme Court denied Cramer leave to appeal and, on May 3, 1979, denied her motions to reconsider that denial and for other relief. (Plaintiff's Preamble paragraph 67, pages 18-19). Yet another counsel (William R. McFadden) was retained who filed a third motion to withdraw as counsel. These motions have not been determined. (Plaintiff's Preamble paragraph 68, page 19).

B. FEDERAL DISTRICT COURT PROCEEDINGS

While Cramer awaited a disposition upon the three motions she had pending before the Michigan Supreme Court in her second civil action, she initiated the instant removal from the Michigan Supreme Court to this Federal district court.

I. THE REMOVAL

On July 20, 1979 Cramer, proceeding in pro per, filed a Petition for Removal of Cause to the Un ited States District Court for the Eastern District of Michigan. It was designated by the Clerk of the Court of the United States District Court for the Eastern District of Michigan as Civil Action No. 9-72789. As presented by Cramer, the removal petition identified each of the two state circuit court civil actions by their respective circuit (115-792 and 78-822-879CZ) and appellate court numbers. The parties were styled as:

VIRGINIA CRAMER, Petitioner-Defendant
(in wrongful foreclosure action)
Petitioner-Plaintiff,

VS

METROPOLITAN SAVINGS ASSOCIATION,
a/k/a METROPOLITAN FEDERAL SAVINGS AND
LOAN ASSOCIATION, JAMES I. McCLINTOCK,
ROGER C. RICHARDS and JOHN C. DENYER,
Jointly, severally and individually,
Plaintiffs in wrongful foreclosure action,
Defendants

and
McCLINTOCK DONOVAN CARSON & ROACH and
JAMES I. McCLINTOCK, MICHAEL DOELLE
and WILLIAM P. THORPE, attorneys at law,
jointly, severally & individually,
Co-Defendants

and
ABEL SELBURN, ALLEN COUNARD and WILLIAM R.
McFADDEN, attorney at law, jointly sever-
ally and individually, Co-Defendants

and
FEDERAL HOME LOAN BANK BOARD, Director and/or Official and/or Officer in Charge
Co-Defendants
and
MICHIGAN SUPREME COURT Members, Justices Mary C. Coleman, Thomas Giles Kavanagh, Charles L. Levin, John W. Fitzgerald, James L. Ryan, Blair Moody, Jr., jointly, severally and individually,
Co-Defendants.

This is the first time in more than eleven years of litigation that either the Federal Home Loan Bank Board, the Michigan Supreme Court or any of its individual Justices were named as party-defendants to these proceedings. The files of all proceedings do not included any order permitting the joinder of these parties either prior to or after rem oval by either judge in the state court system or this federal district court.

II. COMPLAINT FOR DECLARATORY JUDGMENT, REVERSAL OF MICHIGAN SUPREME COURT DECISION, INJUNCTIVE RELIEF, AND MONEY DAMAGES FOR INJURY TO PERSON AND PROPERTY AND DEMAND FOR TRIAL BY JURY.

On the same date that Cramer filed her removal petition, she also filed as part of the removed action, a Complaint for Declaratory Judgment, Reversal of Michigan Supreme Court Decision, Injunctive Relief and Money Damages for injury to Person and Property and Demand for Jury Trial. This 19 page compalint appears incomplete in that it consists of 68 numbered paragraphs which end at page 19 without a clause for relief. It is styled:

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

VIRGINIA CRAMER, Petitioner
Plaintiff

VS

METROPOLITAN SAVINGS ASSOCIATION a/k/a METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, JAMES I. McCLINTOCK, ROGER C. RICHARDS and JOHN C. DENYER, jointly, severally and individually,
Defendants

and

McCLINTOCK DONOVAN CARSON & ROACH and JAMES I. McCLINTOCK, MICHAEL DOELLE and WILLIAM P. THORPE, attorneys at law, jointly, severally & individually,
Co-Defendants

and

ABEL SELBURN, ALLEN COUNARD and WILLIAM R. McFADDEN, attorney at law, jointly, severally and individually,
Co-Defendants

and

FEDERAL HOME LOAN BANK BOARD, Director and/or Official and/or Officer in Charge
Co-Defendants

and

MICHIGAN SUPREME COURT Members, Justices Mary S. Coleman, Thomas Giles Kavanagh, Charles L. Levin, John W. Fitzgerald, James L. Ryan, Blair Moody, Jr., jointly, severally and individually,
Co-Defendants

/

Civil Action
No. 9-72789

MSC
No. 62249

Mich Ct of
Appeals
No. 78-3794

Wayne
Cir. Ct.
78-822-879CZ
(Commenced
7-14-78)

Prior Action
(Wayne)
No. 115-792

Mich Sup.Ct.
No. 57215
reported at:
401 Mich 252

COMPLAINT FOR DECLARATORY JUDGMENT, REVERSAL OF MICHIGAN SUPREME COURT DECISION, INJUNCTIVE RELIEF, AND MONEY DAMAGES FOR INJURIES TO PERSON AND PROPERTY AND DEMAND FOR TRIAL BY JURY

III. COMPLAINT FOR DECLARATORY JUDGMENT, REVERSAL OF MICHIGAN SUPREME COURT - DECISION, INJUNCTIVE RELIEF, (INTERVENTION) AND MONEY DAMAGES FOR INJURIES TO PERSON AND PROPERTY.

A second complaint was also filed as part of the removed action. This complaint consists of 35 pages and 12 numbered paragraphs. It is styled:

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION-DETROIT

VIRGINIA CRAMER, Petitioner Plaintiff	Civil Action No. 9-72789
VS	
METROPOLITAN SAVINGS ASSOCIATION a/k/a METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, et al Defendants	MSC No. 62249
and McCLINTOCK DONOVAN CARSON & ROACH et al Co-Defendants	Mich Ct. Appeals 78-3794
and ABEL SELBURN, ALLEN COUNARD and WILLIAM R. McFADDEN, attorneys at law, jointly, severally and individually, Co-Defendants	Wayne Cir. Ct. No. 78-822-879 CZ (Commenced 7-14-78)
and FEDERAL HOME LOAN BANK BOARD, Director and/or Official and/or Officer in Charge Co-Defendants	Prior Action (Wayne) No. 115-792
and MICHIGAN SUPREME COURT Members, Justices Mary C. Coleman, Thomas Giles Kavanagh, Charles L. Levin, John W. Fitzgerald, James L. Ryan, Blair Moody, Jr., jointly, severally and individually, Co-Defendants	

COMPLAINT FOR DECLARATORY JUDGMENT, REVERSAL OF MICHIGAN SUPREME COURT DECISION, INJUNCTIVE RELIEF, (Intervention) AND MONEY DAMAGES FOR INJURIES TO PERSON AND PROPERTY

This second complaint asserts, in part, that the Federal Home Loan Bank Board encourages and allows improper conduct by its insured and thereby purports to allege state and federal constitutional issues and conspiratorial designs.

ARGUMENT

This movant seeks two types of relief. First, the movant asserts that the additional defendants and both complaints filed by Cramer as part of the removed civil action after removal should be dismissed. Second, the movant assets that, upon dismissal of the post-removal additional defendants and complaints, this court should remand the original proceeding to its appropriate state court 1/.

I. DISMISSAL OF ALL POST-REMOVAL ADDITIONAL DEFENDANTS AND COMPLAINTS

There are several reasons which require this court to dismiss any defendant and complaint joined or filed as part of the removed civil action after the removal.

1/ Movant notes that 28 U.S.C. 1446 provides the right of removal to defendants if exercised within 30 days after receipt of pleadings or service. Movant is not aware of any authority which permits a plaintiff to remove her own action to a different court.

A. PLAINTIFF COULD NOT UNILATERALLY JOIN NEW DEFENDANTS AS PART OF THE REMOVED CASE OR SUBSEQUENT TO REMOVAL WITHOUT LEAVE FROM THE COURT.

When Cramer rem oved the proceedings in Wayne County Circuit Court Civil Action 78-822-879 CZ (or 115-792) to this federal district court, the removed civil action had never previously included either the Federal Home Loan Bank Board (or any of its Directors or officers) or the Michigan Supreme Court or any of its Justices as party-defendants. The files of both state court actions do not include any order which granted Cramer leave from either court to join these particular parties as defendants in either action.

Rather, review of the pleadings indicates that Cramer unilaterally joined these particular parties as she drafted her removal pleadings and two post-removal complaints. The simple fact is that the Federal Home Loan Bank Board and the members of the Michigan Supreme Court were never parties to the removed action prior to the removal. Inasmuch as the state courts never had jurisdiction over these defendants, this Federal district court is also without jurisdiction over these same defendants.

More importantly, whether before or after removal, the fact that Cramer never obtained leave from any court to join these parties as defendants compel their immediate dismissal. Prior to removal, Cramer had to seek leave from the state courts under the appropriate Michigan General Court Rules to join these new defendants. GCR 118, 204.2 and 205. She never sought such leave, it was never granted to her by any state court, and opposing counsel never so stipulated.

Subsequent to removal, Cramer could not unilaterally join these parties as defendant but is required by Federal Rules of Civil Procedure Rule 21 to seek leave to joint such new parties. Spencer v Dixon, 290 F. Supp. (W.D. La. 1968); Perry v Snyder, 33 F.R.D. 361 (E.D. Penn. 1963). She never sought such leave from this Federal district court, it has never been granted to her and the parties have never so stipulated.

B. PLAINTIFF COULD NOT UNILATERALLY FILE TWO NEW COMPLAINTS AS PART OF THE REMOVED ACTION.

The plaintiff has caused her two post-removal complaints to be designated as part of rem oved Civil Action 9-72789. The problem with such a tactic is that Cramer never obtained leave from this federal distric t court to expand the controversy posed by her rem oved civil action to include two new additional complaints. Whether viewed as joined or amended complaints, leave had to be obtained from this Federal district court before the two additional complaints could be filed as part of Divil Action No. 9-72789. Federal Rules of Civil Procedure Rules 15(a) and 21. Perry v. Snyder, 33 F.R.D. 361 (E.D. Penn. 1963).

C. PLAINTIFF HAS NO SUBSTANTIVE RIGHT OF ACTION AGAINST THE FEDERAL HOME LOAN BANK BOARD.

Assuming arguendo that this Court does not accept the above two arguments, the Federal Home Loan Bank Board should nevertheless be dismissed as a party defendant pursuant to Federal Rules of Civil Procedure Rule 12 due to a lack of jurisdiction on the part of this court over the person and subject matter and a failure to state a claim upon which relief can be granted. Three points augment this argument.

I. THE FEDERAL HOME LOAN BANK BOARD CANNOT BE SUED BY THIS PLAINTIFF.

First, the Federal Home Loan Bank Board is an independent agency in the executive branch of the Federal government. 12 U.S.C. 1437. It was created to provide at all times a flexible credit reserve for member savings institutions engaged in home mortgage lending. 12 U.S.C. 1421. Being a federal agency the rule is noted that the United States, as sovereign is immune from suit save as it consents to be sued and the terms of its consent to be sued in any court define that court's jurisdiction to entertain the suit. United States v Sherwood, 312 US 584, 586 (1940). Where Congress has not authorized a government entity to be sued eo nominee, the entity cannot be sued. Blackmar v Guerre, 342 U.S. 512, 517 (1951). The only express waiver of sovereign immunity which permits suit against the Federal Home Loan Bank Board allows the Bank Board to be sued only "by any Federal savings and loan associations or director or officer thereof . . ." 12 U.S.C. 1464(d)(1)2/. Plaintiff Cramer is not such an entity or actor. The recent change in the statute 3/ has been interpreted by the courts as a clear indication by Congress to limit the type of parties that may sue the Board to just Federal savings and loan associations and officers and directors thereof. Chase Save & Loan Assn. v Federal Home Loan Bank Board, 269 F.Supp. 965 (ED Pa. 1967).

2/ Prior to October 16, 1966, Section 1464(d)(1) of Title 12, U.S.C., read that "(T)he Board shall have the power to sue and be sued, complain and defend in any court of competent jurisdiction in the United States."

3/ Footnote 2, supra.

Moreover, courts have recognized that:

> "It is clear that the amendment to 12 U.S.C.A. 1464(d)(1) indicates an intent by Congress that the Board not be liable for money damages, regardless of who the plaintiff might be. S. Rep. 1482, 89th Cong., 2d Sess., reprinted in 1966 U.S. Code Cong. & Admin. News, pp. 3532, 3541. Central Savings & Loan Assn. v Federal Home Loan Bank Board, 293 FSupp 617, 621 (S.D. Iowa 1968).

It is therefore well settled in the law that this individual plaintiff may not sue the Federal Home Loan Bank Board for any relief. Central Savings & Loan Ass'n v Federal Home Loan Bank Board, 293 F.Supp. 617 (S.D. Iowa 1968), aff'd, 422 F.2d 504 (8th Cir. 1970). Putting aside the fact that one of her two complaints is incomplete, neither complaint can state a cause of action against the Board because this court has no jurisdiction over the person and subject matter. Pursuant to Federal Rules of Civil Procedure Rule 12(b), both the complaints should be dismissed insofar as both concern the Federal Home Loan Bank Board.

II. THE BASIS OF PLAINTIFF'S SUITS DO NOT STATE A CLAIM UPON WHICH RELIEF CAN BE BASED.

Assuming arguendo that this court's examination of plaintiff's two actions goes even further, it is respectfully submitted that the plaintiff's allegations against the Board do not state any claim upon which relief can be granted.

Plaintiff's two complaints cite the Fifth and Fourteenth Amendments, 42 U.S. 1983, 1985, 1986 and 1988, 28 USC 1343, 12 USC 1461, 12 USC 1701, 15 USC 1 and 28 USC 1441 are jurisdictional basis. None of these statutes

found jurisdiction in this court. As concerns 15 USC 1, the United States and its agencies may not violate the Sherman Antitrust Act. Eastern RR Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127 (1961); Adams v. American Bar Ass'n, 400 F.Supp. 219 (D.C. N.J. 1975). 12 U.S.C. 1701, et seq., only pertains to the Secretary of Housing and Urban Development which is an entirely different entity than the Federal Home Loan Bank Board. 12 U.S.C. 1461, as pointed out above, only allows the Board to be sued by Federal savings and loan associations. Savings & Loan Ass'n v. Federal Home Loan Bank Board, 293 F.Supp. 617, 621 (SD Iowa 1968). Cramer's civil rights jurisdictional citations (28 USC 1343 and 42 USC 1983, 1985, 1986 and 1988) also fail to meet jurisdiction in this court because, assuming other things, the statute of limitation for bringing such an action has expired.

No federal statute provides any limitation period to actions under the Federal Civil Rights Act. Therefore, "the time for filing an action under the Federal Civil Rights Act is controlled by the applicable period of limitations in a civil rights action is that period which state courts would apply if the action were brought in a state court under state law. Mulligan v Schlachter, 389 F2d 231 (6th Cir. 1968).

Under the law of the State of Michigan, civil rights actions are subject to a three (3) year statute of limitations. Krum v Sheppard, 407 F2d 490 (6th Cir. 1967); Gordon v City of Warren, 415 F.Supp 556 (E.D. Mich 1976). The movant submits that if this action is viewed as being a civil rights action it is barred by the statute of limitations because the plaintiff failed to timely file suit within the provided three year period. The 19 page (Non-inter-

vention) Complaint (which appears to be incomplete) fails to even mention the Federal Home Loan Bank Board outside of its caption. The "Intervention" Complaint complains of an alleged "premature, precipitous and fraudulent" foreclosure on May 23, 1968 (Paragraph 7.28 page 23) and then subsequently complains (at paragraph 9.18 and 9.19) that the Federal Home Loan Bank Board is engaged in a conspiracy due to its involvement in the home mortgage insurance program. Now, more than eleven (11) years later, she has commenced these two actions against the Board. By any calculation, the statute of limitations has expired and Cramer cannot state a claim upon the various civil rights statutes.

III. AFTER DISMISSAL OF ALL POST-REMOVAL DEFENDANTS AND COMPLAINTS, THE REMOVED ACTION SHOULD BE REMANDED ENTIRELY TO THE APPROPRIATE STATE COURT.

Upon dismissal of the improper post-removal joined defendants and new complaints, movant also submits that this Court should remand the remaining litigation to the particular state court from which it was removed.

A. PLAINTIFF COULD NOT REMOVE THIS ACTION

Plaintiff had her choice of forums when she commenced Civil Actions 115 702 (sic, 115 792) and 78 822 879 CZ in the Wayne County Circuit Court. She is not now entitled to go shopping for a new forum. As pointed out in Footnote 1 above, 28 USC 1446 only provides the right of removal to partys defendant and such parties must exercise the removal within no more than 30 days after receipt of pleadings or service. The statute does not provide a right of removal to a plaintiff and m ovant is

not aware of any authority which permits a plaintiff such as Cramer to unilaterally remove her own action to an entirely different court system after years of litigation and appeals have occurred.

B. PLAINTIFF WAIVED ANY RIGHT TO REMOVE

Not conceding that Cramer was not entitled to remove this action, the substantial passage of time, the litigation that ensued during that duration and Cramer's failure to promptly remove amounts to a waiver of any right to remove. 1A Moore's Federal Practice 0.159(a), o.168(4-1).

C. THE REMOVAL PETITION FAILS TO STATE A VALID GROUND FOR REMOVAL.

The burden of proof in a remand proceeding is upon the party who removed to show that the suit was properly removed. 1A Moore's Federal Practice 0.168(4-1)40. The lack of standing on Cramer's part to sue the Federal Home Loan Bank Board precludes diversity jurisdiction. See Section C1 above. The Cramer assertion that "Federal jurisdiction is founded on the extant controversy of a civil rights question . . . the enforcement of MCLA 600.3201 et seq . . . and the U. S. Constitution, Amendments Fifth and Fourteenth . . . " (Para. 1.7) is not sufficient in light of the above to vest jurisdiction in this court. The statute of limitations has expired as to the new post-removal defendants and complaints. And, with regard to the pre-removal matters, the controversy has already been adjudicated several times.

CONCLUSION

Cramer has abused the removal process and has also failed to properly respect the roles

of this Court and her opposing counsel in participating in the procedural processing of this litigation. As a party plaintiff, Cramer has absolutely no right to remove her state court action or actions to this Federal district court. And, after removal, Cramer had absolutely no right to unilaterally join new parties and file two new complaints as part of the removed action involving either the Board or the Members of the Michigan Supreme Court. The post-removal parties and complaints required obtaining leave from this Federal district court before the joinder and filing. Such a matter is committed to the discretion of this court and the plaintiff is bound both to seek the exercise of that discretion and to respect it. Having failed to do so, the new parties and complaints joined and filed after removal without leave from this Court should be struck and dismissed and the remaining removed matter should be immediately remanded to the particular state court from which it was removed.

Respectfully submitted,
JAMES K. ROBINSON
United States Attorney
/s/ SAMUEL J. BEHRINGER, JR.
(P23751) Assistant United States Attorney

Dated:
8-30-79

Filed September 26, 1979 No. 7-72789
U. S. District Court

OBJECTIONS TO MOTION TO DISMISS POST-REMOVAL ADDITIONAL DEFENDANTS AND COMPLAINTS and OBJECTIONS TO MOTION TO REMAND ORIGINAL PROCEEDING

Petitioner-Cramer, Defendant in wrongful foreclosure action, in pro per, objects to the Federal Home Loan Bank Board's motion to

dismiss post-removal additional defendants and complaints and Petitioner-Cramer objects to motion to remand original proceeding, and she says as follows:

1. That the Federal Home Loan Bank Board is without standing to ask the Federal District Court to "strike" Petitioner's complaints, and no grounds or reasons are set forth in the pleadings submitted by the United States Attorney.

2. That the Federal Home Loan Bank Board is without standing to move for dismissal of all new defendants added after removal, which some of the new defendants are members of the Michigan Supreme Court.

3. That the Federal Home Loan Bank Board is without standing to motion the court for 'remand' of this entire action.

4. That the Assistant United States Attorney, Samuel J. Behringer, Jr., who signed the pleadings on behalf of the Federal Home Loan Bank Board and its Director, officer and/or official in charge, Co-Defendants herein, did not mention anything to your Petitioner-Cramer about "concurrance to the requested relief" by telephone on August 21, 1979, and said Attorney, Samuel J. Behringer, Jr., mentioned nothing to your Petitioner-Cramer regarding any kind or manner of relief.

5. That the State court would not have jurisdiction as to the Federal Home Loan Bank Board, on "remand."

6. That Petitioner-Cramer is actually a Defendant-mortgagor, in a wrongful foreclosure action, and in that status, she has the right to remove ex parte, and that Co-Defendants Federal Home Loan Bank Board are not parties to the "removed" action, and

have no standing to object to the ex parte rem oved action.

7. That Co-Defendants Federal Home Loan Bank Board have no standing to ask the Court to "dismiss" after removal.

8. That the remedy for non-joinder is joinder by the court, where justice requires, Rule 19 (a), Rule 21. (FRCP)

9. That the Co-Defendant Federal Home Loan Bank Board is an indispensable party in the separate and independent causes as shown in Petitioner-Cramer's complaint. Rule 19 (b), and separate and independent from the "removed" action.

10. That misjoinder is not ground for dismissal of an action. Rule 21. (FRCP)

11. That Petitioner-Cramer is not required to seek leave to join such new parties and that the court, of its own initiative, amy add such new parties. Rule 21. (FRCP)

12. Non-joinder is not jurisdictional, and the presence of Co-Defendant Federal Home Loan Bank Board is necessary to the granting of complete relief. Rule 21. (FRCP)

13. That Co-Defendants Federal Home Loan Bank Board, by Act of Congress, under Banks and Banking, 12 USCA 1461 et seq., promulgate the Code of Federal Regulations governing activities of lending institutions as to real estate loans and mortgages, and are a real party in interest.

14. That the matter cannot be dismissed without first assuming jurisdiction.

15. That any dismissal must be on the merits, and not for want of jurisdiction.

16. The court would have jurisdiction even though the Co-Defendant Federal Home Loan Bank Board may enjoy the status of liability-immunity.

17. The District Court may exercise its discretion as to jurisdictional statutory provisions.

WHEREFORE for the reasons above shown Co-Defendants Federal Home Loan Bank Board's motions to dismiss and remand should be denied.

/s/ Virginia Cramer,
Petitioner in pro per
Defendant in wrongful
foreclosure

Dated:
Sept 20, 1979

BRIEF IN SUPPORT OF OBJECTIONS TO MOTION TO DISMISS POST-REMOVAL ADDITIONAL DEFENDANTS AND COMPLAINTS AND
OBJECTIONS TO MOTION TO REMAND ORIGINAL PROCEEDING

FACTS

The instant matter as "removed" did not include the Federal Home Loan Bank Board as a party to the State case. Petitioner-Cramer added said Federal Home Loan Bank as a separate and independent cause of action for federal jurisdiction. Said federal agency is an indispensable party as to the subject matter and does not involve any funds payable out of the United States Treasury Dept., as a liability. It does involve the Code of Federal Regulations composed and promulgated by a staff of approximately 35 lawyers in the Federal agency, the Federal Home Loan

Bank Board, located in Washington, D. C.

Said federal regulations are promulgated by authority under Act of Congress, 12 USCA 1461, et seq. and involve the commonly so-called "escrow" funds paid by mortgagors, as deposited with the banking and lending institutions, governed under federal law.

The subject matter is "escrow" funds as pertaining to a wrongful foreclosure, and the provisions in a mortgage contract on a real estate mortgage-loan.

Petitioner-Cramer did not file "two" complaints in the federal jurisdiction. The parties in the "removed" state case do not include the Federal Home Loan Bank Board. The Preamble and the several counts in the Complaint, together, are one complaint. (Mr. Samuel J. Behringer, Jr. is confused about "two" complaints, and it appears he is confused about several other matters, also.)

ARGUMENT

The attorney for the Federal Home Loan Bank Board has shown no reasons or grounds for Petitioner's pleadings to be stricken, and none are mentioned in his brief.

A motion to dismiss is not a responsive pleading, and Co-Defendants Federal Home Loan Bank Board filed no answer to the complaint.

A dismissal must be on the merits and not on a "motion to remand" where the Federal Home Loan Bank Board has no standing to motion for "remand."

Petitioner-Cramer is actually a defendant-mortgagor in a wrongful foreclosure, and has the right to "ex parte" removal.
28 USC 1441 et seq.

Rule 19. (FRCP)

Non-joinder is not jurisdictional. Warner v First National Bank, 23 FR Serv 264, 236 F2d 853 (CA 8th 1956). and the opportunity can be granted to join parties.

Rule 19 (a) (FRCP)

The remedy for non-joinder is joinder by the court, where justice requires. Rule 21. (FRCP)

12 USCA 1464

> "The question of whether a statute or administrative regulation permits maintenance of private cause of action turns on whether provision allegedly violated was designed to protect complainant from injuries of which it complains and whether implication of such cause of action is in furtherance of provision's purpose." City Federal Savings and Loan Assn. v Crowley, DC Wis 1975, 393 F Supp 644.

28 USCA 1337

This statute grants jurisdiction in civil actions arising under any act of Congress regulating commerce.

12 USCA 1464

> "Capital of federal savings and loan associations may only be raised through payments into so-called savings accounts plus earnings accredited thereto for which depositor acquires a share interest in capital of association equivalent to withdrawal value of the interest, and legal relationship resulting is not that of debtor and creditor, and his sole

claim against association is as a shareholder." Wisconsin Bankers Ass'n v Robertson, D.C.D.C. 1960, 190 F Supp 90, affirmed 294 F 2d 714, 111 US App D.C. 85, certiorari denied 82 S Ct 381, 368 US 938, 7 L Ed 2d 338, rehearing denied 82 S Ct 477, 368 US 979, 7 L Ed 2d 441.

Removal action under 28 USC 1441

Co-Defendant Federal Home Loan Bank Board has no standing to object to Petitioner's ex parte removal.

Co-Defendant Federal Home Loan Bank Board has not standing to object to the addition of parties, such as the Michigan Supreme Court.

Co-Defendant Federal Home Loan Bank Board has no standing to ask the Court to "dismiss" after removal, and "remand." Jurisdiction must be assumed first, (before and not after) for a matter to be possibly dismissed, then dismissal of the case would be on the merits, not for want of jurisdiction." Bell v Hood, 327 US 678; Swafford v Templeton, 185 US 487; Binderup v Pathe Exchange, 263 US 291

Also, Petitioner-Cramer incorporates by reference herein her pleadings and briefs in support, involving the similar questions of jurisdiction as to other Co-Defendant-parties named herein.

/s/ Virginia Cramer,
Petitioner in pro per
Defendant in wrongful
foreclosure

Dated:
Sept 20, 1979

Filed September 26, 1979 No. 9-72789
U. S. District Court

MOTION TO CONSOLIDATE REMOVED ACTION NO. 62249 AND PRIOR ACTION NO. 57215 (STATE CASES) WITH INSTANT ACTION NO. 9-72789

Petitioner Virginia Cramer (defendant in wrongful foreclosure) in pro per respectfully moves this Honorable court for consolidation of removed State action No. 62249 (currently pending in the Michigan Supreme Court) and prior action No. 57215 (Wayne No. 115-792) reported at 401 Mich 252, with this instant action No. 9-72789 in the Federal District Court, for the following reasons:

1. That the instant removed action No. 62249 involves said prior action (Wayne 115-792) but is not a continuation of said prior action which was decided on October 6, 1977 and reported at 401 Mich 252.

2. That the instant action (No. 62249) on removal, was commenced in the Wayne Circuit Court on July 14, 1978, including petition to set aside a foreclosure; and Petitioner Virginia Cramer asserts that fraud has been perpetrated upon the Court and upon your Petitioner in said prior action No. 57215 and reported at 401 Mich 252.

3. That said prior action decision of October 6, 1977, reported at 401 Mich 252 is based on false facts, false reporting of procedure and involves attorney malpractice and misconduct, and involves the fraud and deceit of lawyers (on both sides).

4. That Petitioner herein asserts that it is necessary for the prior action No. 57215 and the instant removed action

No. 62249 be consolidated with the instant action No. 9-72789 for the reasons that there is a substantial and controlling common question of law or fact as to both actions.

5. That there is good and sufficient evidence in said prior action No. 57215 for your Petitioner to prove her allegations of fraud, deceit, concealment and attorney malpractice and misconduct, and to prove the assertions of false facts and false reporting of procedure, upon the consolidation of the two cases with the instant action, as aforementioned.

6. That, furthermore, it is necessary to consolidate the said two cases (on removal of state case) in the instant action in order for the court to grant the relief petitioner seeks, and to which she is entitled.

7. That Petitioner seeks relief from the "Order Dissolving Temporary Restraining Order" dated September 27, 1968, fraudulently entered into the court record in No. 57215 and reported at 401 Mich 252, to wit: "The Wayne Circuit Court, Thomas J. Murphy, J., granted judgment for the defendants on a finding that the plaintiff was in default." -- which is false.

WHEREFORE your Petitioner Virginia Cramer (defendant in wrongful foreclosure) in pro per prays that this Honorable court grant consolidation of prior action No. 57215 (Wayne No. 115-792) and the removal of State case No. 62249 (currently pending in the Michigan Supreme Court) with the instant action CA 9-72789; and pursuant to the attached motions for writ of error coram non judice, and to set aside judgment for fraud in the obtaining thereof, incorporated

by reference herein.

/s/ Virginia Cramer,
Petitioner in pro per
Defendant in wrongful
foreclosure

Dated:
Sept 20,1979

BRIEF IN SUPPORT OF MOTION TO CONSOLIDATE REMOVED ACTION NO. 62249 AND PRIOR ACTION NO. 57215 (STATE CASES) WITH INSTANT ACTION NO. 9-72789

Substantial and Controlling common Question of Law or Fact

Where there is an entire absence of proof on the material fact of finding mortgagor in "default" of her mortgage, that finding of "default" becomes erroneous as a matter of law.

ARGUMENT AND LAW

The consolidation of the two State cases (NO. 57215 and NO. 62249) on removal with the instant action No. 9-72789 should be perm itted on the assertion that the question is one of law.

> "Where defendant has complete defense to an action, consolidation with other cases does not deprive him of it." Brewster Loud Lumber Co. v General Builders Supply Co., 1926, 233 Mich 633, 208 NW 28.

Further, the facts are, as they occurred, pertaining to the prior action (No. 57215) and thus, there would be no impropriety in consolidation of the two State actions (No. 57215 and No. 62249) on removal of

said state case to the Federal District court and consolidation of same in the instant action.

> "The propriety of consolidation of actions is to be determined entirely by the state of facts existing prior to the consolidation."
> Hidgon v Kelley, 1954, 339 Mich 209, 63 NW2d 502.

> "Proceeding which is equivalent of common law suit or equitable action to secure relief from an existing judgment, is independent action and removable, regardless of whether or not proceeding sought to be removed is independent in form."
> Federal Savings & Loan Ins. Corp. v Quinn, C.A. Ill. 1969, 419 F 2d 1014

While the facts are the same in the instant action, your Petitioner (mortgagor-defendant in foreclosure action) has never been heard on said facts, and therefore, it may also be regarded as "a new case arising upon new facts" although being related to the validity of an actual judgment rendered (401 Mich 252) and in which "proceedings" your Petitioner-defendant in wrongful foreclosure has never been heard and never allowed to be heard, and Petitioner has never had her day in court on said wrongful foreclosure. Where there was no record made (in the State cases) as to a "finding that the plaintiff was in default", there is nothing to review. Therefore, this action constitutes an original and independent proceeding according to the doctrine laid down in Gaines v Fuentes (1a. 1876) 92 U.S. 10, 23 L Ed 524.

For the reasons above stated, Petitioner-Cramer's motion for consolidation should be granted.

Respectfully submitted,
/s/ Virginia Cramer,
Petitioner in pro per
Defendant in wrongful foreclosure

Dated:
Sept 20, 1979

Filed November 16, 1979 No. 9-72789
U. S. District Court

MOTION TO VOID, NULLIFY OR VACATE Wayne County Circuit Court Order dated September 27, 1968

Now comes Petitioner-Defendant in wrongful foreclosure (Virginia Cramer, in pro per) and moves this Honorable Federal district court to void, nullify or vacate Wayne County Circuit Court Order dated September 27, 1968, for the following reaons:

1. That your Petitioner herein previously motioned this court for consolidation of prior action (Wayne) 115-792 and which is reported at 401 Mich 252, with current action (Wayne) 78-822-879 CZ pending in the Michigan Supreme Court No. 62249, and on Petition for Removal of State case, wherein said motion for consolidation is pending in this Federal District Court.

2. That in said prior action (Wayne) 115-792, which involves legal malpractice, fraud, concealment and deceit of attorneys (on both sides) and where the Wayne Circuit Court forced your Petitioner to hire lawyers

and "Order Dissolving Temporary Restraining Order" alleging Petitioner-mortgagor in "default" of her mortgage, dated September 27, 1968, (see Exhibit A attached hereto) was fraudulently obtained by the attorneys for mortgagee-Metropolitan Federal Savings and Loan, without a proper hearing thereon.

3. That said "Order Dissolving Temporary Restraining Order" dated September 27, 1968, is erroneously made as a "court" order (entered by Thomas J. Murphy, Judge, deceased in 1969), in the absence of jurisdiction. (Exhibit A, attached hereto.)

4. That the complaint and affidavit as an application for temporary restraining order enjoining the said foreclosure with "Order to Show Cause Why A Preliminary Injunction Should Not Issue," dated August 12, 1968, by Plaintiff-Cramer in pro per, was insufficient to give jurisdiction and was entered "ex parte" so as not to allow counter-affidavits of the mortgagee-Metropolitan Federal Savings and Loan. (See Exhibit B, attached hereto.)

5. That the said "Order Dissolving Temporary Restraining Order" dated September 27, 1968, is not an order of the Court and fails to direct the Defendants (Metropolitan Federal Savings and Loan) to proceed with their foreclosure action under the supervision of the Court; that the jurisdiction of the court may not be invoked to enforce the provisions of an illegal contract; that an Order made by the Court without jurisdiction is void; and that a court order obtained upon a false allegation of "default in her mortgage" is a nullity.

6. That at the one and only hearing of September 6, 1968, where the Wayne Circuit

Court priorly would not allow Petitioner-Cramer to represent herself, and where she had hired attorney-Abel Selburn to manage said case and at said hearing which preceded the entry of said "Order Dissolving Temporary Restraining Order" dated September 27, 1968, there was neither evidence nor allegations to support any such finding or determination "that Plaintiff is in default on her Mortgage" and no "exhibits" were entered into the record at said one and only hearing of September 6, 1968.

7. There were no identifications in the record of any Exhibits, but which are fraudulently recited in said "Order Dissolving Temporary Restraining Order", to wit: "the Court having heard testimony and examined the Exhibits which have been filed", and no such "exhibits" were referred to or mentioned in the "testimony" so-called, and no "default" was shown or mentioned.

8. That prior to mortgagee's foreclosure action, mortgagee (Metropolitan) notified mortgagor-Virginia Cramer that her "escrow" account was adequate and increased the m ortgage-payment by $4.00 per month as indicated on the installment-payment-cards furnished by said mortgagee, from $150.00 to $154.00, total for principal, interest and "escrow", commencing for the March 1968 payment, and mortgagor-Cramer paid $245.04 for the said March 1968 payment.

9. That in April 1968, mortgagee-Metropolitan notified mortgagor-Cramer that her "escrow" account was again increased from $154.00 to $186.00 per month, total for principal, interest and "escrow" and by mortgagor's payment of $196.17, the mortgagee (Metropolitan) allocated the current April 1968 payment as follows: (See Exhibit H, attached hereto.)

Principal and interest	$103.81
Escrow	82.19
Additional principal	10.17
April 26, 1968, total	$196.17

10. That also on April 26, 1968, mortgagor-Cramer complained to mortgagee-Metropolitan that:

(a) Mortgagee mishandled the "escrow" funds and repeatedly failed to pay mortgagor's taxes and insurance when due, in 1963, 1964, 1965 and 1967.

(b) Mortgagee required excessive "escrow" funds to fatten their coffers and for self-dealing purposes, contrary to the mortgage covenant and agreement.

(c) Mortgagee failed and refused to furnish any kind of receipts or any kind of supporting advice as to their requirements for "escrow" as estimated by mortgagee and/or disbursements from the "escrow" account.

(d) Mortgagee refused to "release" mortgagor from the "escrow" clause of the mortgage covenant and agreement which requires the mortgagor to pay "escrow" funds "such sums to be held by mortgagee, without interest thereon, to pay said taxes, assessments and premiums when due." -- ani which said mortgage covenant and agreement restricts, inhibits, precludes, prevents and prohibits said mortgagor from paying said liabilities of taxes and insurance where said mortgagee fails and neglects to

pay said mortgagor's liabilities with said mortgagor's "escrow" funds.

(See Exhibit G, attached hereto, Mortgage covenant and agreement.)

11. That without prior notice, the mortgagee-Metropolitan prematurely exercised the power of sale (paragraph 8 of the mortgage covenant) and commenced Foreclosure by Advertisement under the provisions of MCLA 600.3201 et seq., MSA 27A. 3201 et seq., on/or about May 16, 1968, with the first insertion of publication dated May 23, 1968, and where by the terms of the Mortgage (promissory) note no penalty or late charge would be applicable until "after the 30th" or after May 30, 1968. (See Exhibit C attached hereto, Publication and Adjournment to October 1, 1968.)

(See Exhibit D, Mortgage (promissory) Note, attached hereto.)

12. The publication of "Notice of Mortgage Sale" dated May 23, 1968, states that "there is claimed to be due at the date of this notice, the sum of TWELVE THOUSAND FIVE HUNDRED NINETEEN AND 37/100 ($12,519.37) and an attorney's fee as provided for in said mortgage" where the actual principal balance indebtedness was $12,041.91 less "escrow" credit of $32.92, or actual indebtedness of $12,008.99.

13. That the mortgagor-Virginia Cramer never failed to pay "escrow" amounts in accordance with the mortgagee's estimates as shown and included in the total payment of principal, interest and "escrow" by the monthly-installment payment-cards for each and every month, during the entire history of said mortgage, said payment-cards as

furnished by said mortgagee to said mortgagor, prior to the foreclosure publication date of May 23, 1968.

14. That said mortgagee (Metropolitan) refused to accept mortgagor's payment made on May 29, 1968, "on account of the foreclosure," but never returned said mortgagor's check to her and which said check never cleared through mortgagor's checking account.

15. That the newspaper-clipping publication of "Notice of Mortgage Sale" dated May 23, 1968, was posted on the said property on May 31, 1968.

16. That mortgagee-Metropolitan refused, subsequently, to accept mortgagor's two (2) separate checks for June 1968 and July 1968 payments (on account of the foreclosure."

17. That in July, 1968, mortgagee returned said two (2) checks of mortgagor's timely payments, with the explanation that no moneys were acceptable "on account of the foreclosure."

18. That on/or about May 10, 1968, mortgagee-Metropolitan (by John C. Denyer) had telephoned mortgagor-Cramer requesting Cramer to pay over $400.00 in a lump sum for the "escrow" account, while at the same time, said John c. Denyer refused to furnish any kind of supporting advice in writing as to said oral request for payment, and as disputed by mortgagor-Cramer.

19. Subsequent to the publication posting date of May 31, 1968, where the first insertion was published on May 23, 1968, mortgagee alleged a "shortage of requirements" in the "escrow" account, as follows:

"As of May 10 (1968) Metro needs:

6 months County Tax at 37.57	$225.42
11 months City Tax at 7.47	82.17
24 months Hazard Ins. at 4.00	96.00
11 months M.G.I.C. Ins. at 2.76	30.36
	$433.95
Less Credit balance in "escrow"	32.92
Shortage of requirements	$401.03 "

20. That mortgagor-Cramer commenced the prior action (Wayne) No. 115-792 attempting to stop the foreclosure proceedings where said mortgagee-Metropolitan was refusing to accept any moneys from Cramer "on account of the foreclosure."

21. That said prior action (Wayne) No. 115-792 was filed on August 12, 1968, and during the pendency of "proceedings" in the Wayne County Circuit Court where said mortgagee published at least six (6) week-to-week adjournments of the mortgage sale through and including October 1, 1968, mortgagee-Metropolitan revised the "escrow" figures, as follows:

"As of Sept. 6th (1968) Metro needs:

10 months County Tax at 37.57	$375.70
3 months M.G.I.C. at 2.51	7.53
3 months City Tax at 7.47	22.41
28 months Hazard Ins. at 4.00	112.00
	$517.64
(Credit) Balance in escrow	2.82
Shortage of Requirements	$514.82
As of 9-6-68 (less, credit)	100.00
	$414.82 "

(See Exhibit K, attached hereto)

22. That mortgagor-Cramer had hired attorney-Abel Selburn on/or about August 23, 1968, upon the court's insistence, and said attorney filed no pleadings in said case, although he had deceived client-Cramer and had claimed that he had prepared and filed pleadings; said attorney-Selburn also appeared in court on September 6, 1968, on behalf of client-Cramer and where entry of "Order Dissolving Temporary Restraining Order", alleging mortgagor-Cramer to be in "default" of her mortgage, was noticed for hearing on September 27, 1968, attorney-Abel Selburn failed and neglected to appear on said September 27, 1968.

23. That mortgagee-Metropolitan and their attorneys sold the property to themselves by Sheriff's sale, on October 1, 1968, where the Sheriff's Bidding Statement showed no deficiency in the "escrow" account and instead showed an "escrow" credit balance which the mortgagee applied in reduction of t he principal balance. (See Exhibit E and J, attached hereto.)

24. That the current and timely payment for April 1968 made by mortgagor-Virginia Cramer on April 26, 1968, and as allocated by said mortgagee (Metropolitan) resulted in a credit "escrow" balance of $32.92, and of which $30.10 was received by Mortgage Guaranty Insurance Corporation, Milwaukee, Wisconsin, in December 1968, approximately two (2) months after the Sheriff's Sale of October 1, 1968.

25. That the "escrow" credit balance on the Sheriff's Bidding Statement dated October 1, 1968, should have been $32.92 instead of $2.82. (See Exhibit E, attached hereto.)

26. That while mortgagee (Metropolitan) required mortgagor to pay "escrow" funds for future liabilities of taxes and insur-

ances as assessed on said real property, said mortgagee also required payment of mortgage insurance premiums, contrary to the provisions of the Code of Federal Regulations on real estate loans, under Title 12, section 545.6-1 et seq., promulgated by the Federal Home Loan Bank Board, Washington, D.C., where said federal regulations do not require "escrow" on any insured or guaranteed residence mortgage loan.

27. That while mortgagor was disputing the "excessive amounts of "escrow" required by said Mortgagee (Metropolitan) the attorneys for mortgagee-Metropolitan abusively utilized the Foreclosure by Advertisement Statute, MCLA 600.3201 et seq.; MSA 27A. 3201 et seq., and the power of sale in the mortgage contract, in perversion of such power, and foreclosed the mortgage loan to accelerate the payment of mortgagor's own moneys for the "escrow" account for future liabilities of taxes and insurance, while there was a surplus credit balance in said "escrow" account and nothing was due and nothing was unpaid, and during the 15-day forebearance or waiver period of the Mortgage (promissory) Note, without notice.

28. That the mortgagee-Metropolitan and their attorneys utilized the power of sale and the Foreclosure by Advertisement Statute to operate their extortion "racket" for collection of "escrow" moneys to fatten their coffers and for self-dealing purposes, and where no taxes or insurance were due; nothing was billed and nothing was unpaid.

29. That the mortgagee had fraudulently claimed an "escrow" deficiency of $401.03 as of May 10, 1968, when there was actually a credit balance in said mortgagor's "escrow" account.

30. That the entire "foreclosure" incident or occurrance was a fraud perpetrated upon mortgagor-Cramer and a fraud perpetrated upon the court, in perversion of the power of sale contained in the mortgage contract and in perversion of the Foreclosure by Advertisement statute, MCLA 600.3201 et seq.; MSA 27A.3201 et seq., and where mortgagor-Cramer was not in default of said mortgage contract, and where mortgagor-Cramer had paid "escrow" moneys to mortgagee each and every month without fail by the monthly-installment-payment cards furnished to said mortgagor by mortgagee; that also mortgagor-Cramer had paid other sums of "escrow" moneys to said mortgagee-Metropolitan separate and apart from the monthly-installments.

31. That if mortgagor-Cramer had paid said "shortage of requirements of $401.03 as of 5-10-68" the following would have resulted, where obviously said mortgagee-Metropolitan utilized the Foreclosure by advertisement Statute and the power of sale in the mortgage contract, by perversion and to extort excessive amounts of "escrow" for self-dealing purposes:

		Escrow Balance
As of April 19, 1968, "escrow" requirements increased to $82.19 per month, and principal, interest and "escrow" total payment of $186.00, which mortgagor paid $196.17 on April 26, 1968, and which mortgagee allocated as:		
Principal and interest	$103.81	
Escrow	82.19	
Mortgage payment	$186.00	
Additional Princ. Pymt.	10.17	$ 32.92

(See Exhibit H attached)

By payment cards at $82.19 per month for "escrow" for May through December 1968, 8 months at $82.19		657.92
Additional $401.03 "required" for "escrow" as of May 10, 1968		401.03
		$1,091.47
Obligations to be paid in 1968 from "escrow":		
July 1968 City Tax	$101.33	
August 1968 MGIC Ins.	30.10	
Dec. 1968 County Tax	491.09	622.52
Excessive "escrow" required by Metropolitan by foreclosure proceedings of May 23, 1968		$ 468.95

32. That mortgagor-Cramer refused to pay "escrow" after the said publication of Notice of Mortgage Sale dated May 23, 1968, by her check dated and paid to mortgagee-Metropolitan on May 29, 1968, for the current and timely May 1968 installment payment for principal and interest in the amount of $103.81, and where, by the terms of the Mortgage (promissory) Note, no penalty or no late charges were applicable.

33. That after the entry of "Order Dissolving Temporary Restraining Order" dated September 27, 1968, and the Sheriff's Sale of October 1, 1968, the attorneys for mortgagee-Metropolitan constantly claimed "res judicata" and where, by the fraud and deceit and legal malpractice of the attorneys (on both sides) and where the attorneys hired by mortgagor-Cramer, by concealment of fraud and legal malpractice, failed and neglected to take issue with said fraudulently entered "Order Dissolving Temporary Restraining Order" dated September 27, 1968, and depriving mortgagor-Cramer of the benefits of due process.

34. That the Michigan Supreme Court decision reported at 401 Mich 252, in further deprivation of the benefits of due process, shows said same Order dated September 27, 1968, as "The Wayne Circuit Court, Thomas J. Murphy, J., granted judgment for the defendants on a finding that the plaintiff was in default."

35. There were no findings of fact and mortgagor-Cramer was not permitted to be heard. The said "Order Dissolving Temporary Restraining Order" dated September 27, 1968, entered by Thomas J. Murphy, J., is not a judgment and there were no exhibits entered in the court record, and no "default" was shown.

WHEREFORE Defendant-mortgagor-Virginia Cramer, Petitioner in pro per herein, demands that this Honorable court enter its Order voiding, nullifying and/or vacating Wayne County Circuit Court "Order Dissolving Temporary Restraining Order" dated September 27, 1968, as entered in prior action (Wayne) No. 115-792 in the absence of jurisdiction, and reported falsely in Michigan Supreme Court decision dated October 6, 1977, at 401 Mich 252, as a "judgment."

/s/ Virginia Cramer,
Petitioner in pro per
Defendant in wrongful
foreclosure

Dated:
Nov 12, 1979

See Volume 2 of 2 following herewith.